TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1962

No. 111

WILLIAM M. FERGUSON, ATTORNEY GENERAL
FOR THE STATE OF KANSAS, ET AL.,
APPELLANTS,

vs.

FRANK C. SKRUPA, d/b/a CREDIT ADVISORS.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

FILED MAY 9, 1962

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INDEX

	Original	Print
Record from the United States District Court for the District of Kansas		
Complaint	1	1
Transcript of hearing on June 28, 1961, on application for temporary restraining order	8	7
Appearances	8	7
Stipulations of fact	10a	8
Testimony of Frank C. Skrupa—		
direct	10b	9
cross (by Mr. Sanborn)	16	13
cross (by Mr. Henson)	35	24
Colloquy between Court and counsel	37	25
Testimony of Frank C. Skrupa—		
redirect	44	29
recross	45	29
Argument on application for temporary restraining order and ruling thereon	47	31

RECORD PRESS, PRINTERS, NEW YORK, N. Y., DECEMBER 3, 1962

	Original	Print
Record from the United States District Court for the District of Kansas—Continued		
Reporter's and Clerk's certificates omitted in printing	66	40
Temporary restraining order	68	41
Order for three judge court	71	43
Motion of defendant, William M. Ferguson, to dismiss	72	43
Application of Wilbur D. Geeding, et al. for leave to intervene	73	44
Exhibit "A"—Answer and counterclaim of Wilbur D. Geeding, et al.	76	45
Answer of defendant, William M. Ferguson	83	50
Answer of defendant, Keith Sanborn	86	53
Transcript of hearing on August 17, 1961	105	57
Appearances	105	57
Colloquy between Court and counsel	106	58
Testimony of Frank C. Skrupa—		
direct	141	75
cross	148	79
redirect	201	108
Colloquy between Court and counsel	203	109
Reporter's and Clerk's certificates omitted in printing	212	113
Plaintiff's exhibit 1—Excerpts from memorandum brief	213a	114
Defendant's exhibit A—Credit Advisors Company form of business letter to creditors	213b	115
Defendant's exhibit B—Credit Advisors Company notice to creditor of terms of account	213c	116
Defendant's exhibit C—Credit Advisors Company form of business letter to creditor explaining type of service	213d	117
Defendant's exhibit D—Credit Advisors Company form of application for credit	213e	119
Defendant's exhibit E—Credit Advisors Company form of agreement with creditor	213f	121
Defendant's exhibit F—Credit Advisors Company form of power of attorney	213g	122

	Original	Print
Record from the United States District Court for the District of Kansas—Continued		
Transcript of hearing on August 17, 1961—Continued		
Defendant's exhibit G—Excerpt from "Quarterly Report", published by Conference on Personal Finance Law entitled "Missouri Debt Pooler a Bankrupt"	213h	123
Defendant's exhibit H—Excerpts from opinion of District Court of Sedgwick County, Kansas, in case of Frank C. Skrupa v. Gordon Oliver	213j	124
Findings of fact, conclusions of law and opinion	214	126
Dissenting opinion, Stanley, J.	221	131
Journal entry of judgment, permanent injunction, and release of bond	224	133
Notice of appeal to the Supreme Court of the United States	227	136
Order extending time to docket appeal	233	139
Order extending time to docket appeal	238	140
Order to transmit original exhibits to the Supreme Court of the United States	240	141
Clerk's certificate (omitted in printing)	245	141
Order noting probable jurisdiction	246	142

[fol. 1] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

Civil Action No. W. 2434

FRANK C. SKRUPA, d/b/a Credit Advisors, Plaintiff,

vs.

KEITH SANBORN, County Attorney for the County of Sedgwick, State of Kansas and WILLIAM M. FERGUSON, Attorney General for the State of Kansas, Defendants.

COMPLAINT—Filed June 27, 1961

Comes Now the Plaintiff, Frank Skrupa, Jr. d/b/a Credit Advisors, for his causes of action against the Defendants and each of them alleges and states:

Count I

1. The Plaintiff is an individual and a citizen and resident of the State of Nebraska, his correct post office address being 4503 South 26th Street, Omaha, Nebraska; and said Plaintiff is and at all times material hereto has been doing business under the name and style of "Credit Advisors" as hereinafter more fully set out. The Defendant, Keith Sanborn is a resident of the State of Kansas and the duly elected, qualified and acting County Attorney for the County of Sedgwick, State of Kansas and Defendant William M. Ferguson is a resident of the State of Kansas and the duly elected, qualified and acting Attorney General for the State of Kansas.

2. This action arises under the Constitution of the United States, Article I, Section 10 and Amendment 14, Section 1, as hereinafter more fully appears; and also there is diversity of citizenship between the parties hereto as set out above and the matter in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars.

[fol. 2] 3. This action is brought under Title 28 United States Code, Sections 1331, 1332, 2281, and 2284, and is a suit to enjoin the enforcement, operation and execution of a statute of the State of Kansas, Senate Bill 366, 1961 Legislative Session, as being in conflict with the 14th Amendment to the Constitution of the United States, Section 1, and Article I, Section 10, of the Constitution of the United States, and to restrain the defendants, their agents, servants and employees from depriving plaintiff of his property and rights without due process of law, and denying to plaintiff the equal protection of the laws and from enforcing a law impairing the obligation of plaintiff's contracts. Said Kansas Statute is also in conflict with the Constitution of the State of Kansas, Article 2, Section 16, in that the subject of the Bill is not clearly expressed in its title and plaintiff is entitled to an order enjoining enforcement of same on that ground as incidental and ancillary to the substantial federal question herein set out.

4. The 1961 Kansas Legislature passed and the Governor of the State signed an Act known as Senate Bill 366 which reads as follows:

> AN ACT concerning the business of debt adjusting; making certain acts unlawful and prescribing penalties therefor.
>
> Be it enacted by the Legislature of the State of Kansas:
>
> SECTION 1. For the purpose of this act, "debt adjusting" means the making of a contract, express, or implied with a particular debtor whereby the debtor agrees to pay a certain amount of money periodically to the person engaged in the debt adjusting business who shall for a consideration distribute the same among certain specified creditors in accordance with a plan agreed upon. Whoever engages in the business of debt adjusting shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than five hundred dollars ($500), or by imprisonment in the county jail not exceeding six (6) months, or by both such fine and imprisonment: PROVIDED, That the provisions of this act shall not apply to those

situations involving debt adjusting as herein defined incurred incidentally in the lawful practice of law in this state.

SECTION 2. This act shall take effect and be in force from and after its publication in the statute book.

[fol. 3] Said act will be or has been published in the official statute book to take effect June 30, 1961, and unless the defendants are restrained and enjoined from enforcing same, this plaintiff will be irreparably injured.

5. The plaintiff, Frank Skrupa, Jr., is the owner of a business known as "Credit Advisors" with offices in Omaha, Nebraska, and Wichita, Sedgwick County, Kansas; and that said business consists of the business of "debt adjusting" as defined by Kansas Senate Bill No. 366 as set out above; and that said business of this plaintiff by said act and statute is prohibited, declared to be a misdemeanor, and subject to fine or imprisonment, or both.

6. The plaintiff has been engaged in the aforesaid business since September, 1958, and has been engaged in said business in Wichita, Sedgwick County, Kansas, since April, 1960, and since opening an office for business in Wichita, Sedgwick County, Kansas, plaintiff has spent in excess of $20,000.00 for capital improvements and expenses to promote his business and as investment for the future prosperity of the business in the Wichita and Sedgwick County area. The Wichita office of the plaintiff handles an amount of money in excess of an average of $15,000 monthly which is distributed among the specified creditors of debtors availing themselves of plaintiff's services. The plaintiff is engaged in a useful and desirable business which is available to persons who are unable to handle their credit problems without outside financial advice. Plaintiff's employees in all mentioned offices, including the Wichita, Sedgwick County area, are bonded in the amount of $25,000.00 protecting debtors and creditors against loss by embezzlement or dishonesty; and neither the plaintiff nor any of the plaintiff's employees engage in any practices

which in any way are contrary to the public welfare, and the business of debt adjusting and particularly the business conducted by this plaintiff is not inherently immoral or dangerous to the public welfare and may not be absolutely prohibited.

[fol. 4] 7. The defendant, Keith Sanborn, the County Attorney of Sedgwick County, Kansas has stated to plaintiff that he will be obligated to enforce the provisions of said Senate Bill No. 366 against this plaintiff and his employees with criminal sanctions; and the defendant William M. Ferguson, Attorney General of the State of Kansas, having overall supervision of criminal prosecutions in the State of Kansas has indicated that he will contend that said Statute is valid and should be enforced unless restrained and enjoined by a court of competent jurisdiction.

8. The plaintiff has a substantial investment in his business in the State of Kansas as more particularly set out above all of which will be substantially destroyed by enforcement of said Senate Bill No. 366. Certain persons and organizations are already refraining from and refusing to do business with plaintiff because of publicity which is being circulated to the effect that said Senate Bill No. 366 will put plaintiff out of business in Kansas. A number of debtors having contracts with plaintiff are refraining from making further payments through plaintiff because they fear plaintiff will be unable to continue servicing contracts upon said Act becoming effective. Threat of enforcement of said Senate Bill No. 366 and the mere existence of said act deny to plaintiff due process of law and equal protection of the laws.

9. Plaintiff has existing and in force in Wichita, Sedgwick County, Kansas, a total of more than 250 contracts, involving the payment through plaintiff's office of more than $500,000.00 with debtors substantially as described in the said Kansas statute and the threat of enforcement and the mere existence of said Act impairs the obligations of both parties to these contracts.

10. Said Senate Bill No. 366 as applied to this plaintiff arbitrarily and unreasonably deprives plaintiff of valuable

property rights without due process of law, unjustly denies plaintiff the equal protection of the laws and impairs the obligation of existing contracts; and therefore said statute of the State of Kansas is void and invalid being contrary [fol. 5] to the 14th Amendment to the Constitution of the United States, Section 1, and contrary to Article I, Section 10, of the United States Constitution.

11. The title to said Senate Bill No. 366 as passed by the legislature of the State of Kansas is:

> "An act concerning the business of debt adjusting; making certain actions unlawful and prescribing penalties therefor."

but the body of the act as set out above absolutely *prohibits* the business of debt adjusting and therefore the subject of the act is not clearly expressed in the title and the act is therefore contrary to the Constitution of the State of Kansas, Article 2, Section 16, which provides:

> "no bill shall contain more than one subject, which shall be clearly expressed in its title . . ."

and said State Constitutional question is incidental and ancillary to the substantial federal question hereinbefore presented and therefore is subject to determination by this court.

12. The plaintiff has no adequate remedy at law from the threatened acts of the defendants and the law which they seek to enforce. Such threatened acts of the defendants are arbitrarily and grossly discriminatory and repugnant to and violate the Constitution of the United States and the State of Kansas and unlawfully invade the rights of the plaintiff and others and unless said defendants are restrained and enjoined from proceedings to enforce said statutes, this plaintiff will suffer from irreparable harm and injury.

Wherefore, the plaintiff prays that a three judge court be convened pursuant to the provision of Title 28 of the United States Code Sections 2281 and 2284; that the defendants and each of them and their officers, agents and em-

ployees and all persons acting in their behalf be temporarily and permanently enjoined from doing and taking any and all action in the enforcement of said Senate Bill No. 366, 1961 Kansas Session Laws; that the defendants and each of them be restrained by the District Judge from proceeding in the enforcement of the above mentioned statute until such time as hearing can be had on plaintiff's request for a temporary injunction; and that plaintiff have such other and further relief as may be fair and equitable together with costs of this action.

[fol. 6] Count II

1 through 10. Plaintiff realleges and incorporates herein paragraphs 1, 2, 4, 5, 6, 7, 8, 9, 10 and 11 of Count I as paragraphs 1 through 10 of Count II.

11. This action is brought under Title 28, United States Code, Section 1331, 1332 and 2201 because there is an actual controversy now existing between the parties in respect to which plaintiff needs a declaration by the court of the rights of the parties and the validity of a certain statute of the State of Kansas.

12. Defendants and each of them contend that said Senate Bill No. 366 is wholly valid and not contrary to the aforesaid provisions of the Constitution of the United States and the Constitution of the State of Kansas, all of which this plaintiff specifically denies.

Wherefore, Plaintiff prays that this court enter a declaratory judgment, declaring and adjudging that Senate Bill No. 366, 1961 Kansas Session Laws, is in violation of and contrary to the Fourteenth Amendment to the Constitution of the United States, Section 1, and Article I, Section 10, of the Constitution of the United States and the Constitution of the State of Kansas, Article 2, Section 16, and is invalid and void and that the court further declare that the defendants and each of them, their agents, servants and employees and all persons acting in their behalf, have no right to enforce said statute in any way or to threaten enforcement thereof as against this plaintiff and that the

plaintiff have and recover his costs herein and such other and further relief as is fair and equitable.

Ernest McRae, 1020 Central Building, Wichita, Kansas; Weigand, Curfman, Brainerd, Harris & Kaufman, 830 First National Bank Building, Wichita 2, Kansas, By Donald A. Bell, Attorneys for Plaintiff.

[fol. 7] *Duly sworn to by Ernest McRae, jurat omitted in printing.*

[fol. 8] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

Civil Action No. W-2434

FRANK C. SKRUPA, doing business as CREDIT ADVISORS, Plaintiff,

vs.

KEITH SANBORN, County Attorney for the County of Sedgwick, State of Kansas, and WILLIAM M. FERGUSON, Attorney General for the State of Kansas, Defendants.

Transcript of Hearing on June 28, 1961, on Application for Temporary Restraining Order

Hon. Delmas C. Hill, Chief Judge, presiding.

APPEARANCES:

Weigand, Curfman, Brainerd, Harris & Kaufman, by Mr. Lawrence Weigand and Mr. Donald A. Bell, 830 First National Bank Building, Wichita 2, Kansas, Appearing for Plaintiff, and Mr. Ernest McRae, 1020 Central Building, Wichita, Kansas, Appearing for Plaintiff.

Mr. Keith Sanborn, County Attorney, Court House, Wichita, Kansas, Appearing Pro Se.

Mr. Charles Henson, State House, Topeka, Kansas, Appearing for the Attorney General.

[fol. 10] Be It Remembered, that on this 28th day of June, A.D., 1961, the above matter coming on for hearing before the Honorable Delmas C. Hill, Chief Judge of the United States District Court for the District of Kansas, the parties appearing in person and/or by counsel as hereinbefore set forth, the following proceedings are had:

• • • • • • •

The Court: I expect the attorneys should give the reporter your appearances, please.

Mr. Weigand: Lawrence Weigand, Donald A. Bell and Ernest McRae for the plaintiff.

Mr. Sanborn: Keith Sanborn, Charles Henson, Assistant Attorney General, R. K. Hollingsworth, Artie Vaughn for the State of Kansas, and Mr. Wilbur Geeding, the Chairman of the unauthorized Practice Committee of the Wichita Bar Association, and Mr. John Boyer, the President of the Wichita Bar Association.

Mr. Henson: If it please the Court, I am Charles Henson, Assistant Attorney General, appearing on behalf of William Ferguson, and we would like to particularly note that our appearance today is merely for purposes of the hearing on the application for a temporary restraining order. We do not intend to by our appearance today concede that we are [fol. 10a] proper parties defendant in this action.

The Court: All right. Counsel for the plaintiff may proceed on the hearing for temporary order.

Stipulations of Fact

Mr. Bell: Your Honor, I might briefly cover anything that might be stipulated prior to any witnesses.

No. 1, do the defendants stipulate that Defendant Keith Sanborn is a resident of Kansas; that he is the duly elected, qualified and Acting County Attorney, and the Defendant William M. Ferguson is a resident of the State and duly elected, qualified and Acting Attorney General?

Mr. Henson: We so stipulate, Your Honor.

Mr. Sanborn: We so stipulate, Your Honor.

Mr. Bell: Do the defendants further stipulate that the 1961 Kansas Legislature passed an act known as Senate Bill No. 366, which is set out in Paragraph 4 to plaintiff's Complaint, and that this will become effective by publication in the Statute Book on June 30th, 1961?

Mr. Sanborn: We will stipulate that it will become effective July 1, 1961, Your Honor.

Mr. Henson: Your Honor, we have not had a chance to read the Complaint in this action; however, on counsel's assurance that the statute is fully set out, correctly set out in the Complaint, why, we will stipulate to that.

Mr. Bell: July 1st is agreeable with us. There is no [fol. 10b] difference.

I believe with those we are ready for the first witness.

Frank C. Skrupa, produced as a witness for and in his own behalf, being first duly sworn, testifies as follows:

Direct examination.

By Mr. Bell:

Q. Will you state your name and address for the Court, please?

A. Frank C. Skrupa, Omaha, Nebraska.

Q. You are a resident of the State of Nebraska?

A. Yes, sir.

Q. Are you engaged in business in the States of Nebraska and Kansas?

A. I am.

Q. Would you briefly describe for us the name under which you are operating and the nature of the business?

A. The name under which we operate in both Omaha and Wichita is Credit Advisors, and the nature of the business is financial management of people who are having trouble with consumer debt.

That is, we work out a budgeting program for them and [fol. 11] attempt to help them out over a period of time.

Q. Is it correct to say that in your business you make contracts with debtors, whereby they agree to pay you a

certain amount of money periodically which, for a consideration, you distribute among certain specified creditors in accordance with a plan agreed upon?

A. It is.

Q. Have you read Senate Bill No. 366 which is the subject of this action?

A. I have.

Q. And generally do you consider your business to be within the definition of "debt adjusting" as defined in that Act?

A. I do not.

Q. Well, you consider it to be within the definition as defined in Senate Bill 366, do you not?

A. Yes.

Q. I am not asking you if you consider—

A. (Interrupting) Well, I was under a mistaken opinion there.

Q. Would you tell us briefly how long you have been in this business and when you opened your Wichita office?

A. Why, I have been in the business a little over three years. The office here was opened the latter part of April 1960.

[fol. 12] Q. And since April 1960, will you tell us if you can what you have done to promote this office here and how much money you have invested in the office here?

A. Well, the amount of money invested, not counting this month, has been approximately $24,000.00.

Q. What does that include?

A. Well, that includes salaries, the office, office equipment, and advertising, and such incidentals, and it requires, such incidentals as it requires to run the business.

Q. Can you tell us how much money your office handles, approximately, every month?

A. Well, the average varies but it would be approximately $15,000.00.

Q. We are talking about the Wichita office?

A. Right.

Q. And in fact all of your testimony here goes to your Wichita office operations; is that correct?

A. Yes.

Q. Do you carry any bonds on your employees, surety bonds on your employees?

A. We do. All of our employees are bonded to the amount of $50,000.00.

Q. How much?

[fol. 13] A. Fifty thousand.

Q. In your Complaint it is stated that the bond is in the amount of $25,000.00.

A. Well, I believe that has since been raised.

Q. It is at least twenty-five thousand?

A. At least twenty-five thousand, and in the case of managers it is probably fifty thousand.

Q. Can you tell us how many contracts you have existing in your Wichita office at this time between your firm, yourself, and debtors?

A. Approximately two hundred fifty.

Q. And if these were all paid out to conclusion, approximately how much money would this involve as being paid through your office?

A. Well, if they were paid out to conclusion it would amount to about $2,000.00 apiece.

Q. Or approximately $500,000.00 being passed through your office?

A. Right.

Q. Now can you tell us if Senate Bill No. 366 becomes effective on July 1st and this Court does not enjoin the defendants from proceeding to enforce the Act, can you tell us what effect this will have on your business?

A. Well, in a conversation with the County Attorney, he [fol. 14] informed me that he would be required to enforce the law, that is, we would be required to close down and shut our operation, close our business.

Q. Did he tell you that he would have to file a new complaint every day as long as you continued to operate the business?

A. Yes, he did.

Q. What effect would this have on your business?

A. Well, we would simply have to close the business. I don't see how we could operate under those circumstances.

Q. What would this do to your existing contracts?

A. Well, it would be—it would void them. We would be forced to void them. We wouldn't have any choice. There is no way that we could fulfill our obligations towards our clients if we were not allowed to by this law, by this law being enforced.

Q. Do I understand that you have new clients coming into your office every day?

A. Well, we do. Our business is no different than, basically, any others. We depend on volume. And if we don't get new business every day, that is to say new clients, not necessarily every day but in a manner of speaking, business is just going to dry up.

Q. Could you speak up a little bit?

[fol. 15] A. Yes. I am sorry.

Q. Where do these new clients come from?

A. Well, these new clients come both from advertising and referrals.

Q. This is advertising that has already been accomplished and referrals from people whom you have served previously; is that correct?

A. That is right, we have advertised extensively since we have first been here and, of course, which represents quite an investment, and also we have quite a number of referrals from people who feel that we have done a good job for them and also from creditors.

Q. And if this bill is enforced, if this Court does not restrain the enforcement of this bill pending a hearing by a three-judge court, as you have requested, it is your opinion that you will be unable to service your present contracts and to serve any new clients?

A. That is right.

Q. And you anticipate that there will be new clients who will be seeking your services?

A. Yes, I do.

Mr. Bell: That is all.

[fol. 16] Cross examination.

By Mr. Sanborn:

Q. Mr. Skrupa.

A. Yes, sir.

Q. Are you an attorney at law?

A. No, sir, I am not.

Q. Is anybody in your Wichita office an attorney at law?

A. No, sir.

Q. Have you regularly employed counsel to advise you about your business problems in the conduct of this business?

A. We have employed counsel, yes, to advise us on business problems that do arise, just as any other business does.

Q. My question was specifically whether you have a regularly retained counsel, who advises you on the day-to-day operation of your business so far as it pertains to—

A. (Interrupting) No, sir, we do not.

Q. —so far as it pertains to legal problems?

A. No, sir, we do not.

Q. Then, what advice do you undertake to give persons who come to your office in response to either newspaper advertising or referrals from the sources you have mentioned?

A. Well, our services consist merely of financial advice [fol. 17] and a budgeting system.

We are not engaged in giving any opinions of a legal nature.

Q. That of course would be a conclusion, wouldn't it, sir?

A. Yes, it would.

Q. All right. Now, specifically my question was: what occurs in an interview with an individual who comes to your office seeking a solution to his financial difficulties?

A. Well, when a person comes to our office, he is having problems making ends meet. In many cases because he is a poor manager rather than because he is actually too far over his head in debt.

We take a list of his expenses and then we take a list of his income and his family obligations and how much he

has got going out and how much he has got coming in. Then we try to figure out how much he has available to pay towards his bills on the average of a month, and he pays us so much each payday and we in turn distribute this to his creditors for him in such fashion as to try to keep them satisfied and to get him out of debt over a period of time.

Q. Does it happen that some of these creditors whom you get in touch with are represented by counsel?

[fol. 18] A. Only if it would be a major problem or a divorce problem, something like that.

Q. I am referring to counsel concerning the indebtedness.

A. No.

Q. You never talk with any lawyers concerning the indebtedness of the debtor, then?

A. Only if they are representing a creditor.

Q. That was my question: whether it happened that when you call these creditors, you find or you have found they are represented by counsel.

A. Occasionally.

Q. And when you talk with their counsel, do you discuss the arrangement of terms for the extension of time in which to pay the indebtedness?

A. In most cases the attorney has already set up the amount that he wishes the debtor to pay. We simply go along with it.

For instance—

Q. You don't discuss the amount of the payments then with the attorney?

A. If it is a matter—if an attorney has a judgment and he says he wants twenty dollars a month, we arrange so he gets twenty dollars a month if we possibly can. But we do not determine whether or not the debt is valid or in-

[fol. 19] valid or if the man says that he owes John Jones so much money, we take him at his word.

Q. My question was whether or not you negotiated with these creditors regarding the payment of the debts and extending terms, both as to the amount and the period of time in which repayment would occur.

A. We negotiate to the extent that we say "you will re-

ceive so much a month until the debt is paid in as long as this man is paying us regularly," according to the terms of our contract.

Q. In so doing, do you ever arrange or discuss a proration of the amounts?

A. By that do you mean a reduction of the payment?

Q. Yes.

A. Yes, occasionally.

Q. In so doing, do you when a person comes seeking your services attempt to advise him of the advantages of employing your company to work out a budget plan and then to have him deposit a certain amount each week or month and then have you distribute it; is that what your service consists of?

A. Yes.

Q. And then do you govern the amount of payment which you negotiate or attempt to negotiate with each in-
[fol. 20] dividual creditor on that list by the type of claim it is and whatever, how consistent the particular creditor is, and whatever you can to try to make all his payments cover all of the money?

A. We try to fit the bills within the man's income.

Q. I am just referring to your relations with the creditors. I am speaking specifically, or asking you specifically whether or not the amount each creditor receives each week or each month depends upon the nature and amount of his claim; does it depend on that?

A. Yes.

Q. And does it depend upon the amount of his security?

A. To some degree.

Q. And does it also depend upon the extent of pressure exerted for payment by that particular creditor?

A. We try to satisfy the creditor.

Q. So the answer would be "Yes, it does," would it not, sir?

A. Yes, sir.

Q. And creditors who appear to be in the strongest position to prevent the successful consummation of the plan naturally receive more concessions so that the plan can successfully operate for this consumer; is that correct?

A. Well, sir, I wouldn't say that that is necessarily true, no, sir. We try to be fair to all creditors concerned.

[fol. 21] Q. Suppose he has a car and he wants to hold onto this car and you call up the finance company, do you try to fix it up with them so he can keep the car to work in?

A. Let me say this, sir: that in the case of fixed finance payments, in most cases we just assume that that is the amount the payment is going to be.

For instance, if he is paying the ABC Auto Company fifty dollars a month, we don't try to change that figure except in extreme cases where the man absolutely can not make it, and then we will call and see if they will go along with it. If they don't, why, then there is nothing we can do.

Q. Now, what you actually do is make a written agreement with this debtor whereby he undertakes to make these weekly or monthly deposits with you and then you undertake to use your best effort to persuade the creditors to accept the payments according to the plan, don't you?

A. That is right.

Q. And if you are successful in doing this, you distribute the payments, don't you?

A. That is right.

Q. And for your services you get a percentage of the indebtedness or a scheduled amount, depending upon indebtedness, which is roughly a percentage equivalent, don't [fol. 22] you?

A. Correct, sir.

Q. What are your percentages?

A. Well, it will roughly run anywhere between five and nine per cent of the total overall indebtedness.

Q. Now, what instructions, if any, do you give this client, debtor, as to what he should do if he gets some communication from a creditor or from some attorney while you are working on this debt pooling arrangement? Is he to call you, or what?

A. Well, naturally we want to know about any communication. However, if he feels that there is some matter for negotiation, or if he feels that for some reason he doesn't owe this amount, then we simply suggest that he see an attorney. We do not try to determine whether or not he owes this.

Q. My point was "if." A part of your instructions to him are, are they not, sir, that if he has some problem concerning the operation of the plan and some creditor gets in touch with him, since you are trying to set the plan up, you have him get in touch with you and then you get in touch with that person and try to work it out, don't you?

A. Yes, sir, right.

[fol. 23] Q. You try to get him to take the plan.

Now, this is all in the form of a contract, isn't it?

A. Yes.

Q. Do you have copies of your business forms with you?

A. Yes, we do.

Mr. Sanborn: Could we have those and get him to identify them and put them in, please?

Mr. Bell: I think at this time the plaintiff would like to note for the record that we do not feel that this line of questioning is material to this hearing, since the only question on this hearing is whether or not the plaintiff will be irreparably injured unless a restraining order is granted until the matter can be heard by a full court, and we would object to any further line of questioning on that basis.

Mr. Sanborn: Your Honor, we feel the materiality lies in the fact that the Federal Rules of Civil Procedure provide that when proceedings on a hearing for a temporary restraining order in this class of case, as set out, I think it is in Rule 56, Rule 55 or Rule 65 says what you do—will you forgive me if I am mistaken as to the number—and Section 2284, Paragraph 4, sets out what must be [fol. 24] found as a matter of fact, and one thing in issue here is whether there is any substantial federal question presented and, of course, if there is no substantial federal question presented, then it would not be proper, we feel, for the police power of the State of Kansas to be prospectively stayed by the very great power of judicial restraint, which of course we are not questioning jurisdiction. We are merely saying that the factual content of proof must present to You Honor some substantial federal question.

I would like to have these marked, please.

Mr. Bell: May it please the Court, the particular section of 28 USCA involved, 2284, provides that the Court

may grant a temporary restraining order to prevent irreparable damage, and the statute further provides that any restraining order shall contain a specific finding based upon evidence submitted to such judge and identified by reference that specified irreparable damage will result if the order is not granted.

Now, there is no question in our mind but what there is a substantial federal question. I can't see where this line of questioning goes to that particular issue. Nor do we feel [fol. 25] that it necessarily has to be a specific finding or finding of the Court on this type of an order.

Unless this Court wants to get into all of the merits of this case, we feel that it is simply not proper and we would move to strike all testimony along this line and object to any further proceedings along this line at this time.

The Court: Well, I have no desire to try this lawsuit this afternoon on its merits, I will assure you of that.

Mr. Weigand: Might I suggest, Your Honor, that the purpose in us having this witness testify as to the nature of his business is so that the Court could ascertain that this statute if enforced would put him out of business and would create irreparable damage and that is the only issue, I think, that is now properly before the Court, is as to whether or not this man's business is such that the statute attempts not to regulate it but to prohibit it and put him out of business, and that is the only question now until we can submit to Your Honors, and it has to be a three-judge court that hears even the temporary interlocutory order.

Mr. Sanborn: May it please Your Honor, I don't wish [fol. 26] to stop this hearing part to get into the law, but we believe that the Johnson case in 128 Connecticut, 586, answers his question. The question before the Court is not whether this man will be financially damaged. The damages to be reviewed as to whether or not he will be financially damaged are not what are meant by the words "damages" when someone alleges irreparable damage, but rather it is the nature of the right and whether that right in fact does exist as a property right, which is the subject matter of the Court's inquiry as to whether or not someone will be irreparably damaged. That is why we are

going into the nature of the business rather than the extent of financial investment therein.

The very quotation that we gathered in preparation for this case was "whether damages are to be reviewed by a court of equity "—pardon me—" to be viewed by a court of equity as irreparable or not depends more upon the nature of the right which is injuriously affected than upon the pecuniary measure of the loss suffered." This is the only reason for going into this phase.

The Court: You may proceed.

Mr. Sanborn: Thank you, Your Honor.

[fol. 27] Q. I hand you what has been marked by the Clerk for identification as Defendant's Exhibits "A" through "F", and ask you to state after examination of them whether or not they are a set of your business forms with which you do business within the State of Kansas and in Sedgwick County.

A. They are.

Q. Are they?

A. They are to the extent that there have been some minor changes made in one of these forms—one of these forms is no longer in use.

Q. Would you please pick that out from the others, then, sir.

A. Right.

Q. What number do you refer to as no longer in use?

A. "F".

Q. Thank you. When did you stop the use of "F", sir?

A. It is on the top of the statement there.

Q. I say when.

A. February.

Q. Thank you. Now, was that before or after the case in the District Court of Sedgwick County, Kansas?

A. Which case are you referring to?

Q. No. B-6975, Frank C. Skrupa versus Gordon Oliver, 10 February 1961.

[fol. 28] A. After.

Q. Did the District Court there rule that you had to discontinue use of that?

A. No, sir; the forms, as I recall, were not in question.

Q. Did Judge Kline make any ruling with regard, at that time—

Mr. Bell: We object to this line of questioning unless counsel shows any relevance to the issues in this case.

The Court: Why is it relevant or material?

Mr. Sanborn: It shows that there is no irreparable injury because even before the effective date of this statute the District Court in considering his property interest, and this just goes to the property interest—excuse me—that the District Court of Sedgwick County, Kansas, found that this did constitute the unauthorized practice of law.

Mr. Weigand: If the Court please, the District Court of Sedgwick County, Kansas, decision would not affect this Court's jurisdiction to determine the validity of this statute. And it wouldn't be res adjudicata because it isn't the parties here and it wouldn't be binding and it couldn't be anything more than a citation of a decision of a court [fol. 29] and of a record that was not appealed.

The Court: I am not here today to try the case on its merits.

Mr. Sanborn: All right, sir. We would like to offer, Your Honor—I didn't mean to get off on some other subject, anyway—we would like to offer in evidence the business forms heretofore identified by the plaintiff herein as his business forms.

Mr. Bell: We object on the ground of relevancy to this hearing. Otherwise, we have no objection.

The Court: Overruled. I will admit them. Are they marked as one exhibit, attached together?

Mr. Sanborn: "A" through "F".

The Court: I will admit them.

Mr. Weigand: I thought "F" was no longer in use. Are you going to offer it, anyway?

Mr. Sanborn: Yes, sir. It is about the nature of the business activity.

Q. When you are interviewing the people, you have referred to as clients, do you advise them of their rights relative to their financial problems so that they may make a choice between your plan and the plans provided by the

Statutes of the United States pertaining to wage earners or pertaining to bankruptcy?

[fol. 30] A. Sir, we do not discuss bankruptcy or wage earners plans at any time during our interviews. If these subjects are brought up, we suggest that they see an attorney. We have no advice to give them on those plans. Ours is a budgeting service, sir, not a means of disposing of the man's moral obligations, and financial.

Q. Then, if a person doesn't bring up the bankruptcy laws of the United States pertaining to wage earner plans, you don't bring it up to him?

A. No, sir.

Q. Then, if he doesn't bring up the subject or isn't aware of such plan, it is not called to his attention; is that right?

A. No, sir; when a client comes to us, or a person comes to us that is in debt, we assume that the reason he is coming to us is to pay his bills, not to cheat his creditors.

Q. Not to cheat his creditors. A person who comes to you then doesn't have a choice presented to him of the remedy of the wage earners plan in the United States District Court and your plan, does he?

A. I have already stated that we do not discuss wage earners plans or bankruptcy actions.

Q. You do advertise your services?

[fol. 31] A. That is right, sir.

Q. Then, you do advertise that the fidelity of your employees is insured by bonds?

A. Yes, sir.

Q. And you do advertise a schedule of payments.

Mr. Sanborn: Will you mark that, please, that page.

Q. Please look at the page of the "Personal Finance Law Quarterly Report," Volume XV, No. 3, Summer of 1961, page 88, column 1, at the reproduction of purported reproduction of an advertisement which begins "Bills Pressing" and after inspection, please state whether or not that is a reproduction of one of your advertisements.

A. That is a reproduction so far as I know. That is to say, with the exception of one or two words.

Q. Is the format—

A. (Interrupting) The format is the same, right.

Q. Are the contents the same? It is page 88, if you have lost it.

A. Yes, roughly. There may be some small changes. It is probably an ad that we have used at one time or another.

Q. The reason I am asking you to identify it is because I wish to offer it, so I don't want to go on probabilities or suggest that it is something that it isn't.

[fol. 32] A. Sir, our name is on it, so obviously we have used it. These people have taken it from somewhere. I don't know who they are.

Q. I am not trying to entrap you. I just wanted to find out whether or not you have read what I just placed before you.

A. Yes, sir, I have read it.

Q. Is there anything different in any words there from one of your advertisements?

A. No, it is an ad that we have used. It is not an ad that we continuously use. It is an ad that we have used.

Mr. Weigand: Has counsel offered this?

Mr. Sanborn: We thought we would have you inspect it first and then we would offer it.

Mr. Weigand: If you are only going to offer this "Bills Pressing"—

Mr. Sanborn: That is the idea.

Mr. Weigand: —just that deal, take it out of the ad—

Mr. Sanborn: I got that from the Law Library.

Mr. Weigand: I am not talking about that. The entire magazine has no relevancy to this.

Mr. Sanborn: That is true.

Mr. Weigand: If you want to cut this out and offer [fol. 33] this, we will not object to it. We don't think it is material to any issue now before the Court, but we will not object to the Court seeing it.

Mr. Sanborn: Thank you. We do so offer it.

The Court: Just that portion is your offer, is that right?

Mr. Sanborn: Yes, sir.

The Court: All right.

Mr. Weigand: We can cut it out, Judge.

Mr. Sanborn: I might tell you that that happens to

belong to the Law Library and I don't wish to deface that book.

Mr. Weigand: We can agree that the Court Reporter can copy that and then you can withdraw it.

The Court: He may.

Mr. Sanborn: I might tell the Court that anything else there can properly be placed in a brief with perfect decorum and submitted to Your Honor for your consideration in this case, in my judgment.

(Thereupon, the above ad referred to in Exhibit "G" is in words and figures as follows:

"Bills Pressing?

"If installment payments or past due bills are troubling [fol. 34] you, let us consolidate and arrange to pay all your bills, past due or not, with one low payment you can afford.

"If You Owe	As Low As
$1,000	$15 per week
$2,000	$25 per week
$3,000	$30 per week

"Open Nights by Appointment
"No Security—No Co-Signers
"Bonded for your protection
"Credit Advisors, 211 Brown Building
"Phone AM 5-0635

"Debt Worries ? ? ?
"Financial Management Service
"918 Central Bldg. HO 4-4261
"(Wichita Eagle-Beacon, June 4, 1961)")

By Mr. Sanborn:

Q. If a person after hearing of how your plan works is agreeable to signing up with you, you don't attempt to prevent him from seeing his attorney at all, do you?

A. Heavens, no.

Q. But you do attempt to show him the advantages of entering into the plan which your advertisement or your other reference has drawn him to see?

[fol. 35] A. We attempt to show him the advantage of getting out of debt and paying his bills in a regular and systematic fashion.

Q. By the use of your plan?

A. By the use of our services, right.

Mr. Sanborn: We have no more questions, but Mr. Henson has.

Cross examination.

By Mr. Henson:

Q. Mr. Skrupa, I have just two or three questions I would like to ask you on behalf of the Attorney General. When you stated on direct examination that you would be forced to discontinue business if the County Attorney, Mr. Sanborn, files a complaint against you, would you explain why you would be forced to discontinue business upon the mere filing of a complaint?

A. Well, sir, certainly I am not going to subject the people in my office to arrest or even harassment. I mean, I feel that we are operating a bona fide legal service here —not legal, I am sorry—a bona fide service here to help these people out, and if they are going to padlock the doors how can we stay in business? I don't know what they are going to do.

[fol. 36] The County Attorney told me he was going to shut us down. What does this mean? I don't know what he means, sir.

Q. Well, then it possibly could mean that if you were charged criminally and you were subsequently convicted and your conviction was upheld by the Courts of the State of Kansas as being accomplished under a lawful statute and you were forced to pay a fine and maybe suffer imprisonment, then you would suffer some irreparable damage.

A. Well, we certainly feel so. Besides, there is the fact of the reputation here.

Q. Now, have you been served with any summons or any accusation that you have violated this Senate Bill 366?

A. From who, sir?

Q. From any law enforcement officer of the State of Kansas.

A. From no law enforcement agency other than the conversation that I had with the County Attorney on the telephone.

Q. You have been served with no summons or accusation?

A. I have been served with no papers, no, sir.

Q. Have you been informed by the Attorney General, Mr. Ferguson, that he intends to prosecute you under Senate Bill 366?

A. No, sir, I haven't.

Q. Have you had any contact at all with Mr. Ferguson?

[fol. 37] A. Only through my attorneys, sir.

Mr. Henson: That is all, Your Honor.

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Bell: The defendants don't deny that they are going to enforce this law, do they?

Mr. Weigand: If it is not enjoined.

Mr. Henson: Your Honor, we don't feel this is the time to make legal obligations.

Mr. Bell: This is a matter of allegation in our petition and I will put on additional proof, if necessary.

Mr. Henson: We feel the mere statement by the County Attorney, that he intends to do his duty under the law, is not sufficient to show irreparable damage.

Mr. Bell: Well, I will go further than that:

Won't the Defendant County Attorney stipulate that he advised myself and Mr. McRae yesterday in the County Court House that he intended to enforce this law and that he would file an additional complaint every day as long as he continued to operate?

Mr. Henson: Perhaps I should amplify my statement. We don't consider that this shows irreparable damage sufficient to warrant the Federal Court interfering with the enforcement of a State Criminal Statute. State Courts [fol. 38] are available.

Mr. Bell: Is it not stipulated that the facts are there? What the result is is a matter for court determination.

Mr. Henson: We don't stipulate to that. We don't stipulate that you are showing irreparable damage.

Furthermore, we don't think the Attorney General could enforce this if he wanted to in the District Court.

Mr. Bell: In order to save time of the Court, let me inquire of counsel this: First of Mr. Sanborn, the defendant, will you not so stipulate that the facts as I have outlined with reference to what you intend to do in the enforcement of this Act is substantially correct, are substantially correct?

Mr. Sanborn: If you will permit me, I will just tell you my version of what happened, or the Court, and I can do it briefly.

When I talked with this gentleman on the phone, when he called me from Omaha, he inquired of me—

Mr. Bell: I am talking about yesterday.

Mr. Sanborn: I know, but he has been saying I said "I am going to close you down." What I told the man was [fol. 39] that this is the same as any other criminal statute of our State and would be treated the same as any other statute of our State, and he inquired whether we would just give token enforcement to it, and I advised him we would not just give token enforcement to it, that whatever sanctions were imposed would be the function of our courts and not of our office.

What Mr. Bell is referring to as of yesterday was a conversation between he and Mr. McRae and me, in which I stated to them that in the case of pollution cases the practice had been followed in the past of advising the person that a new complaint would have to be filed every day if they didn't desist from the continued course of conduct which violated the State law, and that I supposed we would have to use the same type of measures in this case if a person was arrested for an offense and then committed the same offense the next day, and I don't think any time a State statute is involved that you take a position without regard to what the other one-hundred-five county attorneys might be compelled to do and you work with the Attorney General in the matter, but as I conceive the statutory and constitu- [fol. 40] tional legal machinery in the State of Kansas, it is as the Assistant Attorney General has stated.

The Attorney General does not file actions except in certain specified classes of cases, unless he comes to the conclusion that the County Attorney isn't doing his job properly.

And it isn't any desire to evade what they say, but I don't think that we should be pinned down to one certain course of action prospectively when we have not yet been presented with the first case. That is my reason for kind of elaborating on what Don said. They are not misrepresenting anything about what I said to them, Your Honor. He pointed out that they couldn't file criminal complaints if —they would have to take steps—it won't come to that, anyway, but we were just discussing.

Mr. Bell: Moving from Mr. Sanborn to the Attorney General's office, is it not true that the Attorney General's office has stated that they will be obliged to take the position that this statute is constitutional and valid and that if advice is requested of them from the County Attorney's office, or anyone else, that they will have to take the position it should be enforced.

[fol. 41] Mr. Henson: The Attorney General's office by statute is counsel for State Departments and agencies of the State of Kansas.

If one of those departments or agencies is sued, we as their counsel would of course undertake to defend the legality of their actions. We think that is something different than being a defendant in a case such as we are in this action.

Mr. Bell: I am trying to shorten this hearing and you haven't answered my question.

I am asking you: Is it not true that the Attorney General's Office takes the position that this statute is constitutional and that it is valid and that if requested for an opinion from a County Attorney, or other officers of the County or State, that the Attorney General has stated he will take the position that it is constitutional and valid and that it should be enforced?

Mr. Henson: I can not state— Are you saying Mr. Ferguson has made this statement?

Mr. Bell: I am talking about the Attorney General's office. You are representing him.

Mr. Henson: I say the Attorney General takes no position on the constitutionality of a state statute until it is [fol. 42] brought in question in some manner. We represent the Legislature as legal counsel and if their acts are challenged as illegal, depending upon the judgment of the Attorney General at the time, he would probably defend, as counsel defend the legality of that action of the Legislature.

Mr. Weigand: May I inquire of counsel?

Mr. Henson: Yes, sir.

Mr. Weigand: If the Court should determine that the County Attorney because of his intended enforcement of the action should be stayed pending a hearing on the preliminary injunction before the three-judge court, as provided by statute, and the Attorney General of the State of Kansas is not enjoined, will he assure this Court that he will not take any action or his office will not take any action to enforce this statute against this man until it can be heard on its merits before the three-judge court?

Mr. Henson: I am not authorized to commit the Attorney General's Office to any future course of action. I can cite counsel's attention to the statutes which give the Attorney General no authority to institute criminal prosecu- [fol. 43] tions in the District Court except in certain specified types of statutes of which Senate Bill 366 is not one.

Have I answered your question?

Mr. Weigand: Well, you asked a question of the witness which so far as I could see was of no materiality. The only materiality would be that the Attorney General of the State of Kansas did not, unless restrained, intend to enforce this statute against them until after the Court could determine its constitutionality.

Mr. Henson: If I may explain my question, I assume that the gentleman during his direct examination was trying to show irreparable damage would be suffered by this plaintiff if the Attorney General were not enjoined.

Mr. Weigand: If the enforcement of the statute was not enjoined.

Mr. Henson: The burden of showing irreparable damage is on you. I merely want to point out that I do not believe

the Attorney General has indicated one way or another that he is going to enforce the statute.

Mr. Weigand: That would only be material if there was no threat to enforce it pending the hearing by the three-[fol. 44] judge court with respect to a determination of its constitutionality. It is only that interim period that is now before the Court.

Mr. Henson: I would think that it is up to the plaintiff to show that he will suffer irreparable damage if not temporarily enjoined.

Mr. Weigand: Well, Your Honor, there is no need to discuss the law now.

Mr. Henson: We don't believe that we have made any allegations or could make any allegations to enforce the statute.

Mr. Bell: Your Honor, I would like to ask the witness one more question.

Redirect examination.

By Mr. Bell:

Q. On cross-examination, Mr. Skrupa, Mr. Sanborn inquired of you about the matter of compromising debts, and I would like for you to explain whether or not you were talking about a compromise of a fixed payment or compromise in principal amount of debt.

A. We were talking only about compromising fixed payment. We don't make any attempt to compromise the total amount.

Mr. Bell: That is all.

[fol. 45] The Court: Any other questions?

Recross examination.

By Mr. Sanborn:

Q. Do you attempt to obtain extensions of time within which to pay the indebtedness?

A. Yes, sir, under some circumstances.

Q. When you have successfully effected such extension

of time, do you expect the creditor to honor the agreement that you have reached?

A. Yes.

Q. And do you attempt to make this effectuation in such a fashion that it will be binding upon the creditor to keep his word and if your client does his part of the agreement to perform the payments agreed upon, that the creditor will do his part?

A. Yes, we have to assume this.

Q. You attempt to make a meeting of the minds of the parties upon this matter?

A. Right.

Q. And you attempt to cause the creditor to recede from insisting upon his full right to payment as of a certain time and to consent to have a lesser periodic amount until the total amount is paid?

[fol. 46] A. Yes, until the total amount is paid, but we do not bargain on the total amount.

Q. You don't go into the question of whether the debt may be usurious or not, then?

A. No, sir. If a man comes to us and he says he owes Jones $500.00, we assume he owes Jones $500.00.

Q. What do you do with respect to the interest?

A. I don't follow you, sir.

Q. You get extensions of time. When you do that, what do you do with respect to the interest that accrues?

A. Well, it just accrues and we pay it. We assume that these people, if they have the right to charge interest, that they are charging a fair rate of interest.

Q. You don't undertake to see whether it is fair?

A. No, sir, we don't question their right. If a client of ours felt that he was getting cheated, again I repeat that we would advise him to see legal counsel about this matter.

Q. If what?

A. If a client of ours assumed or for some reason thought that he was being cheated by a creditor or charged too much interest, or anything like that, and told us about it, we would simply refer him to legal counsel, no specific legal counsel, just tell him to get one.

[fol. 47] Q. Do you ever decide after reviewing someone's

financial condition that you cannot do any good for them and tell them they better take bankruptcy?

A. No, sir, we don't tell them to take bankruptcy. We merely tell him that we cannot be of any help to him and that we would possibly get him into more trouble than he is already in.

Q. And do you tell him what he should do?

A. No, sir, we do not.

Q. You haven't referred any of them to anybody?

A. No, sir, we have never referred a single person to any attorney in this town or any other town.

Q. You, yourself, have not. You don't stay around the Wichita office, do you?

A. No, sir, but my people have those instructions.

Mr. Sanborn: That is all.

The Court: You may step down.

(Witness excused.)

The Court: Is there any other evidence on behalf of the plaintiff?

Mr. Bell: We have no further evidence, Your Honor.

The Court: Do the defendants have any evidence?

ARGUMENT ON APPLICATION FOR TEMPORARY RESTRAINING ORDER AND RULING THEREON

Mr. Sanborn: No, sir. Do you have a copy of the statute, Your Honor?

[fol. 48] The Court: I have the Act as it is set out in the Complaint.

Mr. Sanborn: Well, my disadvantage is that we have never seen a copy. We do have a copy of the Senate bill and Donald Bell gave me a photostatic or other mechanical reproduction of his copy of the Senate bill, and I am just going on the assumption that it was passed finally in the form in which they have it, but I have no knowledge that I could represent to this Court that that is the form in which it was passed.

Mr. Bell: All I can say, Mr. Sanborn, is that we have talked to the legislator who helped to push the bill through and he advises us that this is the form of the Act, that it

was not amended when it passed. That this is the Act that was signed by the Governor of the State of Kansas.

As experts in the law, we understand that the statute is to become effective either on June 30th or July 1st, as it is printed and typed in our Complaint.

The Court: Anything else?

Mr. Sanborn: All right.

The Court: Anything else, gentlemen?

[fol. 49] Mr. Weigand: Your Honor, there is a matter of the necessity for any order restraining the defendants to be conditioned upon posting of a bond to pay any damages that might result as a result of it.

I might say to Your Honor that—I don't know whether you want to go into the law with respect to it—but with respect to whether or not there is a substantial federal question, the virtually identical Pennsylvania statute, enacted in 1955, which instead of calling this "Business Debt Adjusting" called it "Budget Planning." If Your Honor will look at Section D of the Kansas Act, I will read from this decision to show you how identical the Pennsylvania statute was, and it was held to be unconstitutional and the deprivation of a person's property without due process of law. I think that is all that we need and that case has never been reversed.

Mr. Sanborn: We would like to know the citation, if we may, please.

Mr. Weigand: Commonwealth v. Stone, 155 Atlantic 2nd, 453, Supreme Court of Pennsylvania. This is the definition section of the Pennsylvania Act:

"Budget planning as used in this section means the making of a contract, express or implied, with a particular [fol. 50] debtor, whereby the debtor agrees to pay a certain amount of money periodically to the person engaged in the budget planning business, who shall for a consideration distribute the same among certain specified creditors in accordance with the plan agreed upon."

That is so similar as to be almost identical, if the Court please, and I think as to substance is sufficient without the additional. We have got a lengthy brief here but Your Honor is not now passing upon the question as to the

constitutionality of the Act, but whether or not there is a substantial question presented and whether, pending the hearing of that by a three-judge Federal Court they should be enjoined from restraining because of irreparable damage, and I think if Your Honor would fix a bond which would be conditioned, the restraining order to be conditioned that it wouldn't be effective until the bond was posted, that the statutes of the United States of America which provide for this action under these circumstances would be completely complied with.

The Court: What do you suggest as the amount of the [fol. 51] bond? I am talking to both sides.

Mr. Weigand: I don't know what their theory of damages could be to the State of Kansas for a period of—what will we have, three weeks or a month—perhaps a month's delay probably, Judge, before the matter of the application for an interlocutory injunction can be heard.

The Court: I assume that the case would be heard on its merits whenever the three-judge court is able to convene.

Mr. Weigand: Well, both ways is provided in the statute. The period of time and I imagine that the only basis of the damages that the State of Kansas could suffer would be the work of the attorneys in ridding themselves of the unlawful restraint.

If there are any other elements of damage, I don't know what they could possibly be.

Mr. Sanborn: If it please the Court, we certainly hope that no restraining order is issued; however, if it should be issued, the measure of damages would be the extent of the business unlawfully engaged in in violation of the law of the State of Kansas, which by the evidence of the plaintiff, I believe was—I don't recall—I think he said some [fol. 52] $500,000.00 per annum, and I believe he stated that his investment was $24,000.00, but the business, not the investments, is what would be the measure of damages.

We have three reasons why Your Honor should not issue a temporary restraining order. The first—we have three cases to cite. By the common law of the State of Kansas, the advice to clients—and we certainly urge they are clients which this man stated to Your Honor he was giving—was held in Depew v. Wichita Association of

Credit Men to be engaging in the practice of law. The citation in the Pacific Reporter of that case is 49 Pacific 2nd, 1041. Finding No. 6, which appears on page 1045, sets out—

The Court: Aren't you going to the merits of the case now?

Mr. Sanborn: I am trying to go only to one question, whether there is a substantial federal question, and I am trying to point out that because of the Depew case in Kansas and because of the fact that our courts without the aid of statute has already found that this is a practice of law, that you can not divest an interest unlawful, that has been declared to be unlawful, before you begin to [fol. 53] engage him. The Depew case was in—Claude Depew brought it on behalf of the Bar Association and that was decided October 5, 1935. Rehearing denied December 16, 1935. And the Supreme Court of the United States refused certiorari in that case, and my point is simply that for many, many years it has been the law that these practices were the unlawful practice of law and the fact that our Legislature should pass a statute declaring a criminal penalty for engaging in the unlawful practice of law is not something new and different and novel, but merely particularizes a certain phase of the business specifically found to be unlawful in 1935 and reviewed by our Supreme Court and not reviewed by the Supreme Court of the United States.

The Court: Let me see that Depew case.

Mr. Sanborn: Then this Home Budget Service v. Boston Bar Association, decided by the Supreme Court of Massachusetts January 7, 1957, argued November 5th, 1956, Home Budget Service, Incorporated, v. Boston Bar Association, an injunction was sought by the Home Budget Service. That is 139 Northeast 2nd, 387:

"Action by corporations and individual furnishing debt [fol. 54] pooling services against Bar Association for declaratory decree as to constitutionality of statute making it illegal for anyone but a member of the bar to furnish services in connection with debt pooling plans held the statute is not constitutional as an interference with purely

judicial function to determine who may practice law is valid enactment in aid of courts' powers to make determination, to make determination and that plaintiffs would be enjoined from rendering such services. A person coming into equity must have clean hands. A person asking a court of the United States not only to enjoin action by a state but to stay the hand of the legislature of a state passing a statute in aid of the common law of the state, as declared by its Supreme Court, that same person having previously been found by the District Court to have been engaged in unlawful practice, all without the aid of this statute, does not have, in our judgment, such clean hands as to call forth this summary and very powerful remedy."

[fol. 55] I would like to merely ask Your Honor to read from page 389, from which I took all the questions of my cross-examination of this gentleman, and find that he answered them in the same way that the Massachusetts court had considered to be this type of business in making their ruling.

Mr. Henson: If it please the Court, if it is proper at this time to do so, I would like to move that this action be dismissed as to William Ferguson, the Attorney General, on the grounds that the plaintiff's evidence has not shown, nor do the statutes of the State of Kansas give him any authority to enforce this criminal statute initially against these defendants. Therefore, we feel they have no cause of action against him as threatening to enforce the statute against them.

Should our motion to dismiss be overruled, we urge that the temporary restraining order not be granted.

We feel that the plaintiffs have not shown that they will suffer irreparable injury or harm if the status or if the matter is continued without such an injunction until the matter can be heard by the three-judge federal court. They [fol. 56] have not shown that any complaints are now pending or have been filed against them. They could not show that because the statute has not yet gone into effect. All they have shown are statements by the County Attorney that he will consider this as he considers every other criminal statute and proceed accordingly. And we feel that statements by a county attorney that he will enforce the

law do not in and of themselves demonstrate that the plaintiff is going to suffer irreparable injury if a temporary restraining order is not granted.

Mr. Weigand: If Your Honor please, the Massachusetts case that they are relying upon, while it appears to have a contrary result from the Pennsylvania case, it is again one of the things even if it was identical, but it isn't. In Massachusetts the statute took a different form. The Massachusetts statute, as I understand that case, merely defined certain acts as the practice of law. And the Supreme Court of Massachusetts merely held that the Legislature had a right to define certain acts as the practice of law.

Now, this statute doesn't say anything about the practice of law. It merely prohibits a man from agreeing [fol. 57] with another man to take a periodic payment and distribute it among his creditors for a fee.

The Supreme Court of Pennsylvania has held that to be a lawful business, and we have other decisions which on the hearing on the merits, I think we can convince any court that that is a lawful business and while it is subject to regulation, it is not subject to prohibition, and this statute prohibits rather than regulates. It doesn't say a man can do so and so under certain conditions. He couldn't say, or it doesn't say he can do so if he posts bond. It doesn t say he can do so if he posts a license. It says he cannot do it. And it is invalid, unconstitutional, deprivation of an ordinary business practice which is not the practice of law.

Now, in the Depew case, which they mentioned, that went to the Supreme Court on Claude's right as president or a member of the unauthorized Practice Committee to enjoin a person from practicing law. The result of that case, Your Honor, it came back after they held that he could practice law, and let me read to you the consent decree that was entered in that case and you can ascertain very readily [fol. 58] that it has no application to this statute or to this type of business at all.

"Whereupon, by consent and agreement of the parties it was by the Court considered, ordered, adjudged and decreed that the defendant, The Wichita Retail Credit As-

sociation, Incorporated, all of its officers, agents, servants and employees, and each and every one of them, be and are hereby restrained and inhibited and permanently enjoined from severally and jointly doing or performing any of the following acts:

"First, from preparing or filing in any district court in this State or before any justice of the peace of this State for and on behalf of another any pleading or other document, from appearing before or representing another in any manner in any action or proceeding in any district court in this State or in the court of any justices of the peace of this State.

"Second, from placing accounts for collections with attorneys at law, from using in its attempt to make collec- [fol. 59] tions any means other than the ordinary solicitation and dunning and from threatening legal action or threatening to place the account with an attorney at law and from threatening to enforce the payment of any claim or account by threatening legal action, provided, that if it appears to be the wish of the creditor the defendant may upon returning the account to the creditor suggest the name of an attorney at law or attorneys at law to handle the account or claim directly for the creditor; from receiving directly or indirectly any portion of any fee paid to or due to an attorney or for any legal services rendered in connection with the collection of a claim, account, demand or otherwise, from advertising or in any manner holding out that the defendants, or any of them, maintain a legal department for the use of others or that it in any manner maintains a law department for the practice of law by the hiring of attorneys to carry on the practice of law from employing directly or indirectly under any contract any attorney at law to file suits or accounts or other claims [fol. 60] of indebtedness for any claimant or creditor.

"Third, from preparing, furnishing or causing to be prepared and furnished in connection with the assignment, transfer or pledging of a debtor's business or property, or any part thereof, any agreement or assignment for the benefit of creditors or any trust, mortgage or any chattel

mortgage, deed or lease or other instrument of a similar nature or character in connection with such transaction whereby legal rights are effected or determined and from giving advice as to the legal rights under any such instrument or instruments from the assignment or transfer of property for the benefit of creditors by whatever means or instrument used by which legal rights are effected or determined and from giving legal advice thereon. This order is not to apply to use by the defendant in its business of blank notes, drafts and similar blanks ordinarily obtainable at a book store and the filling out of same where no legal skill or knowledge is required and where no advice as to legal rights in connection therewith is given and [fol. 61] no compensation or remuneration is received either directly or indirectly.

"Fourth, from using in connection with its collection department or collection agencies printed forms which simulate or are intended to simulate the process of courts and convey the impression that the defendant has the right to issue and serve court processes and bring suit, attachment, garnishment and other legal processes in court for the enforcement of the accounts and claims which it has for collection.

"It is further ordered that the cost of this action be taxed in the amount of twenty-one fifty be hereby assessed against the defendant."

And that was the final result of that, and if there is any similarity between the actions that the Bar Association agreed should be the subject matter of the decree and this action, Your Honor, I fail to recognize any semblance or similarity between them at all, and it not at all in point.

I think Your Honor has only one matter here before the Court today and that is to determine whether from [fol. 62] the evidence of this man's business and activities this statute would prohibit him from carrying them on until such time as the three-judge court can determine the constitutionality of it and setting a bond to pay them any damage which the restraining order wrongfully obtained would result to the State and County Attorney and the Attorney General of the State of Kansas.

Mr. Sanborn: Your Honor, I think counsel is going far beyond the opinion of the Supreme Court of the State of Kansas or the application of it. He cites some agreements between the Bar Association and this Association.

I invite Your Honor's attention to the fact that there were two cases involved in that opinion and it is both Depew v. Wichita Association of Creditmen and Beck, Attorney General, or State of Kansas ex rel. Beck, Attorney General, and I would like to invite Your Honor's attention to the fact that what the Supreme Court expressly found to be unlawful, one portion of it was Mr. Garrison, the manager's counseling people that his plan was a good plan and they ought to accept his plan and refraining from advising them as he was in no position to do, but, never-
[fol. 63] theless, was undertaking to practice law, that they had other judicial remedies under the laws of the United States and this—we start out with a presumption that the Act is constitutional. We have it buttressed by the findings of our court, both then and now. We have this man in February having a finding adverse to the lawfulness which he has been perfectly at liberty to test out if he did not agree with the findings of our court. Here it is the end of June. This was in February. Now he asks you to—it isn't just like a controversy among people. It is a question of whether the sovereignty of our State shall be interfered with. And I know that it won't be interfered with lightly because I know we have a duality of sovereignties and the very fact that the United States would not interfere doesn't imply any weakness on behalf of the United States. It merely would be an application of the rule that if it is a proper exercise of power, it is entitled to the assistance of courts because courts alone determine what is lawful and unlawful practice of law in their state.

The Court: I am not going to determine nor will the three-judge court determine whether or not this is the un-
[fol. 64] lawful practice of law.

All we will determine is the constitutionality of the statute that we have before us. That is a new question. That question is not before the State District Court. It was not decided in the State District Court. The statute didn't even exist at that time.

Mr. Sanborn: Right.

The Court: This is an entirely different question.

Mr. Sanborn: Your Honor, counsel, the reason I addressed my remarks to that, counsel tells you that it is an absolute prohibition. It isn't.

If you will see the statute alleged, it says:

"The provisions of this Act shall not apply to those situations involving debt adjusting as herein defined and incurred incidentally in the lawful practice of law in this State."

It doesn't prohibit a certain business. It prohibits making a business out of the practice of law which is a profession.

The Court: Anything else, gentlemen?

Mr. Sanborn: No, sir.

The Court: The temporary order will issue and I will [fol. 65] fix the bond at $2500.00.

Mr. Weigand, I suggest that you submit to me appropriate findings of fact in connection with the order.

Mr. Weigand: We have prepared an order, Your Honor, which, if I might show it to counsel to see if they have any objection.

The Court: If it is all right, you just leave it. I think we will adjourn court. In any event, you prepare and submit to me an order and, if it meets with my approval, I will sign it.

Mr. Weigand: Thank you, Judge.

Mr. Henson: Your Honor, do I understand that the Attorney General is maintained a party defendant?

The Court: I am going to keep his feet in the fire.

Mr. Sanborn: Your Honor, I am not trying to be technical, but the Governor hasn't been notified of this and he has to be notified too.

The Court: This is only a hearing on the temporary order, Mr. Sanborn. That five-day notice will be given in the time provided for by law.

Court will be adjourned subject to call.

[fol. 66] Reporter's certificate (omitted in printing).

[fol. 67] Clerk's certificate (omitted in printing).

[fol. 68] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS
Civil Action No. W-2434

FRANK C. SKRUPA, d/b/a Credit Advisors, Plaintiff,

vs.

KEITH SANBORN, County Attorney for the County of Sedgwick, State of Kansas, and WILLIAM M. FERGUSON, Attorney General for the State of Kansas, Defendants.

TEMPORARY RESTRAINING ORDER—June 28, 1961

This cause comes on to be heard on the application of the plaintiff in the above entitled cause for a restraining order and for an interlocutory injunction against the defendants, Keith Sanborn, County Attorney for the County of Sedgwick, State of Kansas, and William M. Ferguson, Attorney General for the State of Kansas, in the above cause on the verified complaint of plaintiff; it appearing to this Court that said complaint herein seeks an interlocutory judgment restraining the enforcement of Senate Bill 366, 1961 Kansas Session Laws, a statute of the State of Kansas, by restraining the acts of the County Attorney of Sedgwick County, Kansas, and the Attorney General of the State of Kansas, in the enforcement of such statute against this plaintiff upon the ground of the unconstitutionality of the said statute as provided in Sections 2281 and 2284 of Title 28 of the United States Code.

Whereupon, the Court after notice to the said defendants, who appeared at this hearing at 3:00 o'clock p.m. on the 28th day of June, 1961, by Keith Sanborn pro se and Chas. Henson for the Attorney General, and the Court having [fol. 69] heard evidence finds and concludes that immediate and irreparable damage will be caused to plaintiff by reason of the enforcement of said statute, in that evidence pro-

duced by the plaintiff shows that the enforcement of the statute would require the complete cessation of the plaintiff's business involving the plaintiff in breach of contracts partially performed, loss of customers and business, as well as good will and reputation, unless a temporary restraining order is issued against said defendants pending the hearing of said application for an interlocutory injunction, or until the further order of this Court.

It is ordered that upon the filing with the Clerk of this Court a bond giving security by the plaintiff in the sum of 2500.00 Dollars conditioned upon the payment of such costs and damages as may be incurred or suffered by any defendant who is found to have been wrongfully restrained, Keith Sanborn, County Attorney of Sedgwick County, Kansas, and William M. Ferguson, Attorney General of the State of Kansas, and their agents, associates, assistants and all persons acting in their behalf be and are hereby enjoined from filing any complaint against the plaintiff, his agents, servants or employees, for alleged violation of said Senate Bill 366, 1961 Kansas Session Laws, or prosecuting any acts for violation of same by said plaintiff or in any way attempting to enforce any of the provisions of said Senate Bill against said plaintiff until said hearing for said application for an interlocutory injunction or until further order of this Court.

Dated at Wichita, Kansas, this 28th day of June, 1961.

Delmas C. Hill, United States District Judge.

[fol. 70] Approved:

Weigand Curfman Brainerd Harris & Kaufman, By Laurence Weigand, Attorneys for Plaintiff.

Keith Sanborn, County Attorney, Sedgwick County, Kansas.

Charles N. Henson, Jr., Ass't Attorney General, for the Attorney General,

Defendants.

[fol. 71] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

[Title omitted]

ORDER FOR A THREE JUDGE COURT—July 10, 1961

Honorable Delmas C. Hill, United States District Judge for the District of Kansas, having notified me that an application for injunction has been filed in the above matter, and that it is an action required by Act of Congress to be heard and determined by a District Court of three judges:

Now Therefore, It Is Ordered that said Court shall be constituted as follows: Honorable Walter A. Huxman, United States Circuit Judge; Honorable Delmas C. Hill, United States District Judge; and Honorable Arthur J. Stanley, Jr., United States District Judge.

Dated on July 10, 1961.

Alfred P. Murrah, Chief Judge, United States Court of Appeals, Tenth Circuit.

[fol. 72] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

[Title omitted]

MOTION OF DEFENDANT WILLIAM M. FERGUSON, ATTORNEY GENERAL FOR THE STATE OF KANSAS, TO DISMISS—Filed July 14, 1961

Defendant William M. Ferguson, Attorney General for the State of Kansas, moves the Court to dismiss the action

because the complaint does not state a claim against defendant upon which relief can be granted.

Charles N. Henson, Jr., Assistant Attorney General.
Topeka, Kansas, Attorney for Defendant.

Certificate of Service (omitted in printing).

[fol. 73] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

[Title omitted]

APPLICATION OF WILBUR D. GEEDING, ET AL. COMPRISING UNAUTHORIZED PRACTICE OF LAW COMMITTEE OF WICHITA BAR ASSOCIATION TO INTERVENE—Filed August 8, 1961

Come now Wilbur D. Geeding, Robert A. Coldsnow, Ralph Foster, Guy L. Goodwin, Donald B. Clark, William Porter, Julian E. Ralston, Cliff W. Ratner, Robert J. Roth, Robert M. Siefkin and J. Edward Taylor, Jr. and respectfully move the Court for permission to intervene and to file the answer and counterclaim hereto attached as Exhibit "A".

1. Applicants are licensed attorneys at law, residents of the City of Wichita and citizens of the State of Kansas. Applicants comprise the Unauthorized Practice of Law Committee of the Wichita Bar Association. The Wichita Bar Association is a voluntary association of attorneys at law resident in Wichita and citizens of the State of Kansas. Such association has more than 400 members, and it is impracticable to bring them all before the Court. The members of such association have a common interest in [fol. 74] preventing the unauthorized practice of law. Pursuant to resolution of the Board of Governors of the Wichita Bar Association applicants appear as representatives of the members of the Wichita Bar Association.

2. As stated more fully in the answer and counterclaim hereto attached the members of the Wichita Bar Association claim that the activities of the plaintiff as alleged in the complaint constitute the unauthorized practice of law and that the statute attacked in the complaint is simply declaratory of the existing common law of Kansas that such activities are illegal.

3. The courts of the United States are the final arbiters of whether or not state legislation violates the Constitution of the United States. If not permitted to intervene, a decision in favor of plaintiff in this action would or might preclude the claim of the Wichita Bar Association that plaintiff is engaged in the unauthorized practice of law, without its having an opportunity to be heard.

Wherefore, applicants pray that they be permitted to intervene herein and that the attached answer and counterclaim be permitted to be filed.

Wayne Coulson, 901 First National Bank Building, Wichita 2, Kansas, Attorney for Applicants.

Certificate of Service (omitted in printing).

[fol. 76]

EXHIBIT "A" TO MOTION

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

[Title omitted]

ANSWER AND COUNTERCLAIM OF WILBUR D. GEEDING, ET AL., INTERVENING DEFENDANTS

Come now Wilbur D. Geeding, Robert A. Coldsnow, Ralph Roster, Guy L. Goodwin, Donald B. Clark, William Porter, Julian E. Ralston, Cliff W. Ratner, Robert J. Roth, Robert M. Siefkin and J. Edward Taylor, Jr. and for their answer and counterclaim, allege:

Answer

1. These defendants are licensed attorneys at law, residents of the City of Wichita and citizens of the State of Kansas. These defendants comprise the Unauthorized Practice of Law Committee of the Wichita Bar Association. The Wichita Bar Association is a voluntary association of attorneys at law resident in Wichita and citizens of the [fol. 77] State of Kansas. Such association has more than 400 members, and it is impracticable to bring them all before the Court. The members of such association have a common interest in preventing the unauthorized practice of law. Pursuant to resolution of the Board of Governors of the Wichita Bar Association these defendants appear as representatives of the members of the Wichita Bar Association.

2. These intervening defendants are officers of the courts of the State of Kansas and as such are authorized and required to call to the attention of the courts all instances of the illegal practice of law within their knowledge.

3. These intervening defendants admit the allegations of paragraphs 1, 2, 4, except the last clause thereof, 5, 7, and 8 of the complaint.

4. These intervening defendants deny the allegations of paragraph 3, the last clause of paragraph 4, paragraphs 10, 11 and 12 of the complaint.

5. These intervening defendants have insufficient information to form a belief as to the truth of the averments of the first two sentences of paragraph 6 of the complaint. These defendants deny the remainder of paragraph 6 of the complaint.

6. These defendants have insufficient information to form a belief as to the truth of the averments of paragraphs 8 and 9 of the complaint.

7. These defendants allege that the public interest and the protection of the public demand that legal advice and services be rendered to the public by qualified persons, schooled and educated in the law and who are duly admitted

to practice as attorneys and counsellors at law under the laws of the State of Kansas.

[fol. 78] 8. That the public interest requires and demands that any person receiving legal advice and services will receive the same directly from a duly qualified attorney and counsellor at law, who shall directly represent such person and who is at all times subject to the discipline and control of the courts of this state.

9. That one of the chief functions of the Wichita Bar Association is to aid in maintaining for the benefit of the public high standards of professional services and conduct and to that end it has organized and maintained certain committees such as the Committee on Unlawful Practice of the Law to protect the public against unqualified and unlicensed persons and corporations who may engage improperly and illegally in the practice of law and hold themselves out as authorized to practice law.

10. Plaintiff, in connection with the services rendered and offered to be rendered to his clients, has for more than the one year last past, rendered legal service and given legal advice to his clients as will be hereinafter more particularly described, all of which acts may be performed only by a person duly permitted to practice as an attorney and counsellor under the laws of the State of Kansas; that the plaintiff is and has been engaged in rendering services as follows:

a. Plaintiff has held himself out as being in a position to represent a debtor by adjusting, compromising, settling, paying-off or otherwise discharging the debtor's obligations out of funds deposited with the plaintiff by the debtor for distribution to the debtor's creditors on the basis of terms worked out by the plaintiff with the creditors.

[fol. 79] b. Plaintiff has at various times in the past, advertised that the plaintiff was in a position to represent debtors in the handling and adjustment of their financial affairs.

c. That in various other forms and through other means, including solicitation in person and by mail, plaintiff has appealed for clientele by representing that he will handle the financial affairs of persons troubled by debt and will "get them out of debt" and will "protect their credit rating".

d. When a debtor-applicant contacts the plaintiff, he is invited to fill out an "Agreement" in which he is to list each and all of his obligations, including date incurred and present balance. The debtor is interviewed by the plaintiff as to his ability to pay a stipulated amount in regular installments to the plaintiff for distribution to his creditors. The debtor is advised as to the amount of such installment deposits that he should make in view of his earnings and circumstances. The amount agreed upon is then inserted in the "Agreement".

e. If a satisfactory understanding is reached with the debtor as to the amount and times of the deposits, the debtor is called upon to sign a contract with the plaintiff providing for a fee to plaintiff, which is usually 25 to 30 per cent of the amount of the indebtedness.

f. Upon execution of the contract and with the payment of the first deposit, it is the practice of the plaintiff to then proceed to contact the creditors of the debtor-client, in such order or priority as to the [fol. 80] plaintiff may seem wise or expedient. When contacted a creditor is advised as to the total amount of the client's indebtedness and the amount and frequency of the deposits which are to be made by the client and the amount and the times of the installments which the plaintiff proposed to distribute to the creditor in payment in full or compromise. In the event a creditor is dissatisfied with the proposed arrangement, the plaintiff negotiates with the creditor in an effort to persuade the creditor to accept the plan or agree upon some variation thereof mutually agreeable to the creditor and plaintiff.

g. In dealing with an unsecured creditor to whom the debtor is obligated on an open account, such as doctors, dentists, department stores, local merchants, etc., the plaintiff may and often does endeavor to compromise the indebtedness and persuade the creditor to agree to settle for less than the amount of the account, even though the amount agreed upon is to be paid on a deferred basis. In concluding compromise agreements, stipulations of settlement, releases or statements of satisfaction on behalf of debtors, preparatory to execution the plaintiff fills in blank spaces on forms of such instruments prepared by plaintiff's attorney-at-law, who represents plaintiff regularly on a retainer basis.

h. In dealing with a creditor who is unwilling to extend the time of payments or enter into an agreement for the liquidation of the obligation in the future, the plaintiff has on several occasions advised the debtor to file a voluntary petition in bankruptcy under the [fol. 81] Bankruptcy Act.

i. In dealing with a secured creditor, the plaintiff may and often does agree to make full contract payments to the creditor on behalf of the debtor-client, where the creditor is not willing to extend the time of payments or otherwise vary the terms of the contractual arrangement. Where the security instrument has not been filed or recorded, the plaintiff negotiates with the creditor taking into consideration the rights and interests of the particular creditor, general creditors and the debtor.

j. The plaintiff indicates and represents to the debtor that he will work out a workable plan for the liquidation of the debtor's obligations; the debtor is led to rely upon the advice and guidance of the plaintiff.

11. The services so rendered by the plaintiff involve the application of legal knowledge and skill and the consequent rendering of legal advice and services in doing

and performing the acts heretofore set forth and described; these defendants therefore allege that the plaintiff has engaged in the unlawful practice of the law and that all such acts engaged in by the plaintiff are in violation of the laws of the State of Kansas in such cases made and provided.

12. By virtue of the facts heretofore alleged plaintiff does not come into court with clean hands, is not entitled to litigate the alleged invalidity of the statute and is not entitled to equitable relief.

Wherefore, these intervening defendants pray that the action be dismissed for want of equity and, in the alternative, for a determination that the statute is valid; for an [fol. 82] injunction against plaintiff's unlawful practice of law by engaging in the "debt adjusting" business.

/s/ Wayne Coulson
901 First National Bank Building
Wichita 2, Kansas
Attorney for Intervening Defendants

[fol. 83] [File endorsement omitted]

In the United States District Court
For the District of Kansas

[Title omitted]

Answer of Defendant William M. Ferguson, Attorney General of Kansas—Filed August 16, 1961

Count I

First Defense

The complaint fails to state a claim against defendant upon which relief can be granted.

Second Defense

1. The allegations of paragraph 1 are admitted.

2. The allegations of paragraph 2 are admitted.

3. The allegations of paragraph 3 are denied.

4. The allegations of paragraph 4 are admitted, except that defendant denies that plaintiff will be irreparably injured unless defendant is enjoined from enforcing Senate Bill 366.

5. The allegations of paragraph 5 are admitted.

6. Defendant is without knowledge or information sufficient to form a belief as to the truth of the first two sentences of paragraph 6; the allegations of the third sentence are denied; defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of the fourth sentence regarding bonding of [fol. 84] employees; the allegations of the remainder of the fourth sentence are denied.

7. Defendant is without knowledge or information sufficient to form a belief as to the truth of the first clause of paragraph 7; defendant denies the second clause of paragraph 7.

8. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 8, except that defendant admits that plaintiff's business is prohibited by Senate Bill 366, and denies the allegations of the last sentence of paragraph 8.

9. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation concerning the extent of plaintiff's contracts; defendant denies that Senate Bill 366 impairs the obligations of these contracts.

10. Defendant denies the allegations of paragraph 10.

11. Defendant admits the title to Senate Bill 366 is as alleged by plaintiff, but denies that the title violates Article 2, Section 16 of the Kansas Constitution.

12. Defendant denies the allegations of paragraph 12.

Count II

First Defense

The complaint fails to state a claim against defendant upon which relief can be granted.

Second Defense

1 through 10. Defendant incorporates herein paragraphs 1, 2, 4, 5, 6, 7, 8, 9, 10 and 11 of the Answer to Count I as [fol. 85] paragraphs 1 through 10 of this Answer to Count II.

11. Defendant denies that there is an actual controversy between the parties in respect to which plaintiff needs a declaration by the Court as to the rights of the parties and the validity of a certain statute of the State of Kansas.

12. Defendant contends that Senate Bill 366 is a valid enactment of the Kansas legislature, but denies that he has authority to enforce its provisions against the plaintiff or threatens to do so.

Charles N. Henson, Jr., Assistant Attorney General,
Topeka, Kansas, Attorney for Defendant.

Certificate of Service (omitted in printing).

[fol. 86] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

[Title omitted]

ANSWER OF KEITH SANBORN, COUNTY ATTORNEY OF SEDGWICK COUNTY, KANSAS—Filed August 17, 1961

Keith Sanborn, County Attorney of Sedgwick County, State of Kansas, for his Answer to plaintiff's Complaint, states:

1. He denies every allegation of plaintiff's Complaint not expressly hereinafter admitted.

2. He admits plaintiff is an individual citizen and resident of Nebraska, and makes no contention regarding plaintiff's address. Admits plaintiff's operation under the name of Credit Advisors. Admits his residence and qualification as County Attorney and those qualifications of Attorney General, William M. Ferguson.

He denies this action arises under the Constitution of the United States, Article I, Section X, and Amendment Fourteen, Section I, or either of them. Diversity of citizenship is admitted. The jurisdictional sum of $10,000.00 being in controversy is not admitted.

[fol. 87] He admits this action is brought under Title 28, United States Code, and that the relief sought is an injunction. He denies the Senate Bill 366 is in conflict with the Fourteenth Amendment to the Constitution of the United States, Section I, and Article I, Section X of the Constitution, or either of them. He denies that any property interest of the plaintiff is unlawfully interfered with; that the statute is in conflict with the Constitution of the State of Kansas, Article II, Section 16, and further denies the jurisdiction of this Court to decide the Kansas Constitutional question.

The passage of the act, Senate Bill 366, as alleged in paragraph four, is admitted. Defendant denies that any legally protectable irreparable injury will occur to plain-

tiff. Defendant admits plaintiff's ownership of the business and denies that the acts are prohibited by the statute. Defendant makes no contention regarding the time plaintiff has been in business, but admits plaintiff has been doing business in Wichita, Kansas. Defendant admits plaintiff has invested money in the business in Wichita, but has no evidence sufficient to form a belief regarding the extent thereof.

Defendant denies future prosperity of Wichita and Sedgwick County will be adversely affected by the elimination of plaintiff's business. Defendant expressly denies the usefulness and desirability of the conduct of business of plaintiff when in truth and in fact said business amounts to the unauthorized practice of the learned profession of the law. Defendant denies that debtors are protected by the operation of plaintiff's business and denies that plaintiff nor his employees engage in a practice contrary to the public welfare and denies that the method of doing business [fol. 88] of plaintiff does not adversely affect the public welfare.

Defendant admits that he will and intends to enforce the criminal statutes of the State of Kansas of which Senate Bill 366 is one and that he has so advised plaintiff. Defendant denies that the existence of this Act deprives plaintiff of any legally protectable interest and further that equal protection of the laws is not involved.

Defendant makes no contention regarding the effect of the public policy of the State of Kansas on plaintiff's business. Defendant has no knowledge of which to base a belief concerning paragraph nine, but does deny that the existence of the Act impairs the obligation of contract, it being merely declaratory of the common law of the State of Kansas existing before the contracts were in effect.

Paragraph ten defendant denies. Paragraph eleven defendant denies. Paragraph twelve defendant denies. As to Count Two of plaintiff's Petition, defendant denies all allegations realleged and incorporated previously denied by the foregoing portion of this Answer. As to paragraph eleven defendant admits plaintiff deems himself aggrieved by the Law of Kansas, but denies any rights of plaintiff

are being infringed. Defendant admits paragraph twelve of Count Two.

For further Answer, defendant as County Attorney for Sedgwick County and the State of Kansas, alleges the practice of law is a learned profession licensed by the State of Kansas and supervised by the Supreme Court of the State of Kansas.

3. The court has adopted standards of knowledge, ability and character for its practitioners.

4. The court has inherent authority to and has fined matters comprising the practice of law.

5. Prior to plaintiff's setting up operations in the State [fol. 89] of Kansas and in Wichita, Kansas, particularly the practices in which plaintiff engages are and have been declared to be the practice of law. The statute of which plaintiff complains declares the public policy of the State of Kansas is not a new departure and merely provides sanctions for the unauthorized practice of law in addition to those already in existence.

6. Plaintiff is not a member of the bar of the State of Kansas and thus has not shown himself entitled to engage in the practice of law.

7. It is the duty of this court to support and protect the courts of the State of Kansas in limiting the practice of law to those duly entitled, qualified and authorized officers of the court.

8. The police power of the State is paramount under the Constitution of the United States and is entitled to protection of this court.

9. The public policy of the State of Kansas as expressed in the statute being attacked, the decisions of the Supreme Court of the State of Kansas and the customs and practices of the bar are entitled to the support of this court.

10. Said statute is an exercise of the police power of the State and is a power not delegated to the United States by the Constitution nor prohibited by it to the States and is reserved to the States respectively and to the people thereof

as provided in Amendment X to the Constitution of the United States.

11. For further Answer this defendant alleges that the suit itself is an attempt to violate the Eleventh Amendment to the Constitution of the United States by seeking to cause the judicial power of the United States to extend to a suit against one of the United States, the State of Kansas, by [fol. 90] plaintiff, a citizen of the State of Nebraska and the nominal defendants, Keith Sanborn, County Attorney and William M. Ferguson, Attorney General, are merely officers and agents of the State through which it exercises its reserve police power and the State is the real party in interest.

Wherefore, defendant, Keith Sanborn, prays this court to enter its judgment finding that the plaintiff has no legally protectable interest; that the acts of plaintiff constitute the unauthorized practice of law; that the statute declares the common law of the State of Kansas and declares the public policy of the State of Kansas does not contravene the Constitution of the State of Kansas or the United States and that it is valid in all respects. Defendant further prays that he have and recover his costs herein and such other and further relief that the Court deems just and equitable, and further that this action brought by plaintiff has caused expense to the State of Kansas and to Sedgwick County in particular for the preparation of the defense herein and for travel to the Court in Topeka, and that the bond posted by plaintiff herein was for the purpose of securing to the State of Kansas the expense and damage of the extraordinary exercise of authority in restraining the enforcement of the criminal law of the State and plaintiff should be required to pay a reasonable sum to indemnify the State of Kansas for the expenses of this proceedings, and for such other relief as may be deemed just and equitable.

Keith Sanborn, County Attorney.

[fol. 91] *Duly sworn to by Keith Sanborn, jurat omitted in printing.*

[fol. 105]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

Civil Action No. W-2434

FRANK C. SKRUPA, d/b/a Credit Advisors, Plaintiff,

vs.

KEITH SANBORN, County Attorney for the County of Sedgwick, State of Kansas, and WILLIAM M. FERGUSON, Attorney General for the State of Kansas, Defendants.

Transcript of Hearing on August 17, 1961

APPEARANCES:

Hon. Walter A. Huxman, Judge, United States Court of Appeals for the Tenth Circuit (Ret.),

Hon. Delmas C. Hill, Chief Judge, United States District Court for the District of Kansas,

Hon. Arthur J. Stanley, Jr., Judge, United States District Court for the District of Kansas, Presiding.

Lawrence Weigand and Donald A. Bell, of the firm of Weigand, Curfman, Brainerd, Harris & Kaufman, Wichita, Kansas, and Ernest McRae, Wichita, Kansas, Appeared for Plaintiff.

Keith Sanborn, County Attorney, Sedgwick County, Kansas, Wichita, Kansas, appeared in person and by William Tomlinson, Deputy County Attorney, Sedgwick County, Kansas, Wichita, Kansas, and Artie Vaughn, Deputy County Attorney, Sedgwick County, Kansas, Wichita, Kansas.

[fol. 106] Charles N. Henson, Deputy Attorney General, Topeka, Kansas, Appeared for Defendant

William M. Ferguson, Attorney General for the State of Kansas.

Wayne Coulson, Wichita, Kansas, Appeared for Intervenors.

Harold Pittell, Official Reporter.

Be It Remembered, on this 17th day of August, A.D., 1961, the above matter coming on for hearing before the Honorable Walter A. Huxman, Judge, United States Court of Appeals for the Tenth Circuit (Ret.), Hon. Delmas C. Hill, Chief Judge, United States District Court for the District of Kansas, and Hon. Arthur J. Stanley, Jr., Judge, United States District Court, and the parties appearing in person and/or by counsel as hereinabove set forth, the folowing proceedings were had:

Mr. Weigand: Plaintiff is ready, if the Court please.

Mr. Sanborn: Defendant Keith Sanborn is ready, Your Honor.

Mr. Benson: Your Honor, the attorney general is present.

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Coulson: I have an application on file for permis-
[fol. 107] sion to intervene on behalf of the members of the Unauthorized Practice of Law Committee of the Wichita Bar Association.

Judge Huxman: Any objections?

Mr. Weigand: Your Honor, we would state in the record that, while we think it probably would be proper, if the Court deems it advisable to consider the appearance amicus curiae of the bar association, I don't believe the bar association or any member of the bar has any right to intervene in a three-Judge Federal court case which involves the constitutionality of the statute and which seeks enjoinment—enforcement of the statute by the law enforcement agencies, which is the county attorney and the attorney general of the state.

Judge Huxman: Do you grant their right to appear as amicus curiae?

Mr. Weigand: Yes, I think Your Honors could admit that, if you so desire.

Mr. Coulson: I will be glad to be heard on the motion to intervene, Your Honor. I think, in fact, I think we are entitled to intervene as a matter of right, and, if I am [fol. 108] mistaken in that view, I lean more strongly to the view that intervention is permissive as a party, not simply as amicus curiae.

Judge Huxman: Does it make any difference whether you intervene as a matter of right or amicus curiae?

Mr. Coulson: I can't see that it does, in any practical way.

Judge Huxman: The effect will be the same. You are in for whatever you have to submit on behalf of one of the sides of this issue.

Mr. Coulson: I believe that is true.

Judge Huxman: You may file your petition of intervention. The Court will treat it in the nature of an amicus curiae appearance, whatever the nature, it makes no difference in the ultimate result.

Let's have all the appearances, so the reporter gets them.

Mr. Henson: Charles Henson, assistant attorney general, appearing on behalf of William Ferguson, the attorney general.

Mr. Sanborn: Keith Sanborn, County Attorney of Sedg- [fol. 109] wick County, on behalf of the State of Kansas.

Mr. Tomlinson: William Tomlinson, Deputy County Attorney for the County of Sedgwick, Kansas, on behalf of the State of Kansas.

Mr. Vaughn: Artie Vaughn, Deputy County Attorney, State of Kansas, on behalf of the defendant.

Mr. Coulson: Wayne Coulson, Wichita, on behalf of Wilbur D. Geeding, Robert A. Coldsnow, Ralph Foster, Guy L. Goodwin, Donald B. Clark, William Porter, Julian H. Ralston, Cliff W. Ratner, Robert J. Roth, Robert M. Siefkin and J. Edward Taylor, Jr., as members of the Unauthorized Practice of Law Committee of the Wichita Bar Association.

Mr. Weigand: Lawrence Weigand and Donald Bell, and Mr. McRae, of Wichita, for the plaintiff.

If the Court please, with respect to the character of the appearance of the Sedgwick County lawyers' committee, they have filed what they denominated a counter claim in this action. It is the position of the plaintiff that there is no basis for a counter claim by amicus curiae, or for an [fol. 110] intervenor to counter claim, in an action such as this, where the sole issue is the constitutionality of a state statute.

Judge Huxman: What do they seek by virtue of their counter claim?

Mr. Weigand: They seek to make allegations respecting various practices which they say are the unauthorized practice of law, most of which are not encompassed or in any way relevant to the particular wording and scope of the statute in question, and it broadens the matter into what might be termed a state court proceeding for the unauthorized practice of law and has no relevancy to the scope of the statute which we are questioning here.

Judge Huxman: They seek no affirmative relief in any way, do they, Mr. Weigand?

Mr. Weigand: I think they seek an injunction, if the Court please. The prayer in this petition is as follows: "Wherefore, these intervening defendants pray that the action be dismissed for want of equity and, in the alternative, for a determination that the statute is valid; [fol. 111] for an injunction against plaintiff's unlawful practice of law by engaging in the 'debt adjusting' business".

Judge Huxman: With the exception of the last, the rest is the same relief sought by the defendant, isn't it, the dismissing of the complaint?

Mr. Weigand: Yes—

Judge Huxman: So the only—they ask for an injunction, that is the only affirmative relief that isn't sought by the defendants.

Mr. Weigand: What I wish to call Your Honors' attention to is the allegations of the complaint which go beyond the scope of the inquiry of this court in this matter, which

pertains solely whether or not the statute, as passed by the legislature, is valid and constitutional.

Mr. Coulson: The relief prayed for by the intervenors is, first, that the action be dismissed for want of equity. Only in the alternative—

Judge Huxman: Does the defendant also ask for that relief?

Mr. Coulson: I am not able to answer that. I think he asks for a determination that the statute is valid. We ask [fol. 112] for a determination if the statute is valid only in the alternative. We contend that the action should be dismissed for want of equity without ever reaching the validity of the statute, and, in the alternative, we ask that the statute be held valid and for an injunction against the practice of law.

Judge Huxman: Here is the way the Court feels about this, gentlemen: The only thing we are concerned with is whether this statute violates any provision of the Federal Constitution, whether it is invalid under the provisions of the Federal Constitution; whether it is equitable or inequitable, that might be a matter for the state court. But it isn't before this court. You can present anything you want to, but we are going to determine whether the inhibition of this statute violates the plaintiff's right under the Fourteenth Amendment to the Constitution. That is the only thing we are interested in.

Mr. Coulson: I have just checked the answer of the defendant Sanborn, who makes the same—asks for the [fol. 113] same relief; the basis for it is that the plaintiff is not entitled to be heard on whether or not the statute is constitutional or not.

Judge Huxman: Well, that might be a question, whether the plaintiff has a right to maintain this action. I suppose that—

Mr. Coulson: That is exactly what the intervenors' prayer goes to, and, also—

Judge Huxman: Do you base that on the ground that it would be inequitable for them to maintain this?

Mr. Coulson: No, sir, that they don't come into court with clean hands. He is engaged in an illegal practice and is not entitled to an adjudication that an act barring that practice is valid or invalid.

Judge Huxman: Here is the way the Court presently feels about this question, that here is a charge that this statute is void, I understand, because it violates the Federal Constitution, impinges upon the plaintiff's rights guaranteed by the Federal Constitution. Now, there may be subsidiary questions that enter into the determination of that question. Is that the main thing that we have in this case?

[fol. 114] Mr. Coulson: I think that is true. This only is a challenge of their right to be heard on that subject.

Judge Huxman: If the statute prohibits something that the plaintiffs have a right to do under the Federal Constitution, it is void. We will all agree to that, won't we?

Mr. Coulson: Yes, sir.

Judge Huxman: And if it doesn't, isn't this case at an end?

Mr. Coulson: That's right, this particular point goes to the question of whether they have a right to do it. Our contention is that they don't—didn't have the right to do it, statute or no statute, and so the statute couldn't have affected their rights.

Judge Huxman: With this explanation by the Court that we are primarily concerned with the question of whether this statute violates the rights guaranteed by the Federal Constitution, now, it may be that we have to consider some subsidiary questions, personally, speaking for myself, I fail to see that it makes any difference to that question, whether it is clean hands or unclean hands. But, [fol. 115] if the parties want to present that question, why, we have no objection to it. We will do that, and then whether we are going to give much weight to that question or not will be for the Court's determination when we come to—

Mr. Coulson: Very well.

Judge Huxman: Are we, then, at an understanding as to how we are going to proceed?

Mr. Henson: Your Honor, I would like to call the Court's attention to the motion of the attorney general to dismiss the action as to him.

Judge Huxman: We will hear that as part of the general hearing today; that is a question, of course, peculiar to the attorney general, isn't it?

Mr. Henson: Yes, sir.

Judge Huxman: He contends, in any event, they can't sue him, is that his position?

Mr. Henson: We contend that this complaint pleads no cause of action.

Judge Huxman: We will hear you with respect to that. [fol. 116] Now, gentlemen, one other thing, as to the scope or extent of this question, I think, we just had an informal discussion, and I can say for myself that I am more concerned with an adequate brief on these various questions than I am with the law—with oral argument as to what the law is. What I would like, myself, is a statement of the parties as to their various positions on this question. At the conclusion, I want a brief. What do you say, Chief Judge?

Judge Hill: I would prefer that, myself.

Judge Huxman: Judge Stanley, what do you say?

Judge Hill: We are going to take the matter under advisement, anyway.

Judge Huxman: Oh, yes.

Judge Hill: And you are going to have to write briefs for us.

Judge Huxman: It is an important question. With that in mind, suppose we let the parties proceed, so, Mr. Weigand, I guess the burden is—

Mr. Weigand: There was certain testimony taken in [fol. 117] front of Judge Hill on the application for the temporary restraining order. Would the county attorney and the attorney general agree that that transcript can be submitted in lieu of a repetition of the same testimony by the witness?

Judge Huxman: Is that agreed to by the defendants?

Mr. Henson: We would not, by entering into such an agreement, want to admit that we are a proper defendant in the action.

Judge Huxman: That is very true.

Mr. Henson: With that reservation, we will agree to it.

Judge Huxman: There is no claim that this transcript is not a correct transcript of what took place before Chief Judge Hill, is there?

Mr. Sanborn: No, sir.

Judge Hill: And that it may be considered as evidence before the three-Judge Court on behalf of the plaintiff, subject, of course, to any objection that you may want to lodge against it?

[fol. 118] Mr. Henson: Yes, sir.

Mr. Sanborn: Yes, sir.

Mr. Weigand: Now, there were no objections, if I remember rightly, except those we interposed, which we will withdraw in this hearing. If there are any other objections to the competency or relevancy of this testimony, I think it ought to be noted in the record, so we can be advised as to what is being challenged.

Judge Huxman: Suppose you offer the transcript, Mr. Weigand, and then the other parties will have an opportunity to make objections to it, if they want to.

Mr. Weigand: Do you wish this marked, Judge?

Judge Huxman: Mark it as an exhibit. Judge Hill tells me it is a part of the record in this case, anyway. It is already in the record.

Mr. Weigand: Yes.

Judge Huxman: Does anybody want to lodge any objection as to why we shouldn't consider it?

Mr. Sanborn: We don't, Your Honor, and I might not [fol. 119] be correct, but we did file, as a part of our answer, the defense that this is, in fact, a case prohibited by the Eleventh Amendment to the Constitution of the United States, in that it truly is an action by a citizen of Nebraska against the State of Kansas, and I am only stating that because we did plead it.

Judge Huxman: All right, you may proceed, Mr. Weigand.

Mr. Weigand: Now, there will be some additional testimony to supplement this record, and not to duplicate it, if the Court please. If you are ready now—or would you prefer that I make an opening statement with respect to the plaintiff's position?

The challenge is simply to the validity of the Senate Bill 366, for the reason that it violates the Fourteenth Amendment to the Constitution of the United States, the Kansas Bill of Rights, Section 1, and Article (2), Section 16, of the Kansas Constitution, and is void and unconstitutional

and cannot be enforced against this defendant—plaintiff, rather, who is a person engaged in doing the specific act which is prohibited, or allegedly prohibited, by the act, [fol. 120] and that it is not a regulatory act, but it is a prohibition act, with respect to a lawful business, which is subject to regulation but not subject to prohibition, and we rely upon Adams v. Tanner, Supreme Court of Pennsylvania, which passed upon—

Judge Huxman: Now, that is your argument, Mr. Weigand?

Mr. Weigand: I thought you wanted a—

Judge Huxman: You state to us what your position is and not make your argument.

Mr. Weigand: I was simply outlining the position so you could follow the evidence that we supplemented before we put it on, but I can put on the evidence first.

Judge Huxman: You are making your opening statement now?

Mr. Weigand: Yes, just an outline of the plaintiff's position.

Judge Huxman: All right, you proceed.

Mr. Weigand: It is the position of the plaintiff, who is a resident of Nebraska and who has, for some three or [fol. 121] four years, been engaged in this business in Nebraska, and also other states, and who has been engaged in this business lawfully in the State of Kansas since—for a portion, about eight months, of 1960, long prior to any enactment of this act; that his activities do not constitute the giving of any kind of advice or the drawing of any legal instruments that are, in fact, a legal matter; that he does give financial advice to people who, through credit buying, have not the means currently to pay all of their debts as they mature, and this act prohibits not the doing of that, if done once, but the doing of it if done periodically; that it is a prohibition of a lawful business rather than a regulation of it, and that it is, as I said, unconstitutional and void, because, first, it deals with more than one subject matter, contrary to Article (2), Section 16, of the Kansas Constitution, it doesn't have in its title the matter that they complain about with respect to the practice of law, it violates the pursuit of happiness guaran-

teed to him by the Fourteenth Amendment, which is the right to pursue any lawful calling, subject only to reasonable regulation and not prohibition, and that, therefore, the [fol. 122] statute is void and unconstitutional and cannot be enforced against him under the due process clause of the Federal Constitution.

Mr. Sanborn: Very briefly, the position of the State of Kansas, so far as I am concerned in a representative capacity, is that the business, so-called, has been declared, by judicial act of the Supreme Court of the State of Kansas, as long ago as 1935, and by the District Court of Sedgwick County, Kansas, both at that time, and with respect to this same defendant, prior to the passage of the statute about which they are complaining, to be the practice of law and the unauthorized practice of law, and the statute merely gave an additional remedy to the inherent authority vested in the Court to govern persons who would be practitioners of the law, including the United States District Court for the District of Kansas, which has jurisdiction in all sorts of matters, including, very particularly, wage earner plans in bankruptcy, and that, when this statute was passed, it merely supplemented remedies already in existence and merely declared the public policy, as expressed by the legislature of the State of Kansas, to be [fol. 123] that a criminal sanction would attach to this unauthorized practice of law, and the statute clearly points out that it does not prohibit, it isn't a prohibitory statute, it merely limits the practice of law to those who are amenable to the discipline and the ethics and the control of the courts of the State of Kansas and of the United States sitting in the State of Kansas; and that, whether this statute were passed or not would not affect the unlawfulness of the defendant's conduct—pardon me, the plaintiff's conduct, and that is the reason that he has no standing here, that what he did—any contract he entered into he knew was subject to the police power of the State of Kansas and to the control in the state of who would be its practitioners, so nothing was added by the statute except a formal—an extra remedy, and that he knew, or should have known, before he ever attempted to set up this business in the State of Kansas that it was unlawful in the state.

Mr. Coulson: Very concisely stated, it is the position of amicus curiae that the plaintiff had no legal right to engage in the business which is prohibited by the statute, [fol. 124] and that, therefore, the statute could not have deprived him of any property rights of any kind or character, or of any personal rights.

It is the position, secondly, of the amicus curiae that the legislature had the right to determine that, whether or not this was the practice of law, it required, for the protection of its citizens, the giving of advice, which this agency does not, or claims it does not, give, and was a lawful exercise of the police power of the State of Kansas, and that the Constitutional provisions mentioned by Mr. Weigand yield to the legitimate police power of the State of Kansas.

Judge Huxman: Mr. Coulson, just one question: Suppose it is subject to police power of the state, does that give the state the right to prohibit it or to regulate it?

Mr. Coulson: We contend there is no prohibition. There is a limitation to those who are authorized, who are licensed.

Judge Huxman: Well, they can't carry on this business, can they, in Kansas?

Mr. Coulson: If they are licensed, yes.

[fol. 125] Judge Huxman: Can they get a license?

Mr. Coulson: If they are admitted to the practice of law, just as you and I. That is the license.

Judge Huxman: Well, then, it prohibits the carrying on of this business by anyone but licensed attorneys?

Mr. Coulson: Exactly. It does that.

Judge Huxman: Then—and they are admittedly not attorneys?

Mr. Coulson: That's right.

Judge Huxman: Therefore, they are prohibited from carrying on this business in Kansas?

Mr. Coulson: They are until they become licensed.

Judge Huxman: Certainly, but they are not licensed attorneys and, therefore, they are prohibited under the statute?

Mr. Coulson: That is absolutely true, Your Honor, yes, sir.

Judge Huxman: Now, that is a question that, under the [fol. 126] police power to regulate, this is such a business that the police power could authorize the prohibition, unless they first go through law school and become practicing lawyers, that is the question?

Mr. Coulson: That is the question before Your Honor.

Judge Huxman: It is a difficult question; at least, presently, it is to me. It may become clear when I get the briefs.

Mr. Coulson: Obviously, we aren't agreed, Your Honor, or we wouldn't be taking up your time here.

Judge Huxman: Are there any further statements by any of the parties?

Mr. Weigand: Might I clarify one thing with respect to the positions: The position taken by Mr. Coulson, I submit, by a careful reading of this text, is not open to the lawyer engaged in the general practice of law if he limits himself solely to this business. Even a lawyer, you or I, Judge, could not carry on the debt adjusting business if we do it exclusively, as this act is worded. We can only do it if we incur it incidental to the general practice of [fol. 127] law, which is an arbitrary and unreasonable thing, even if it was otherwise justified, and I wanted to emphasize the position, the issue, with that statement, because you can see clearly from a reading of this, from the Pennsylvania Supreme Court, which upheld the contention that this identical act, under a different label, labeled "budget planning" instead of "debt adjusting", and the only difference, the identical words passed by the legislature of Pennsylvania in 1955, we submit, were adopted by Kansas after the Pennsylvania courts had declared that act unconstitutional; and there is also a rule of law that, when a state adopts a statute from another state, it adopts the construction of that statute by the state, and I submit, Your Honor, that that is a point—

Judge Huxman: Mr. Weigand, that is true, ordinarily, when they adopt a statute, but if they adopt a construction the courts have placed upon it, saying, "You can't do that", why would they pass the act?

Mr. Weigand: I don't think, Your Honor, this act was ever adequately considered, but that is a factual matter [fol. 128] that I think is closed to us in this proceeding.

Judge Huxman: I'll go with you that, when one state adopts a statute of another, they adopt the ordinary construction placed upon that statute, but it would be a little difficult for me to go so far as to say that they adopt a construction which says you can't do it.

Mr. Weigand: The construction which the Pennsylvania court placed upon it said that the act itself means a situation that is forbidden by the Constitution of the United States.

Judge Stanley: Mr. Weigand, this was the Supreme Court of Pennsylvania?

Mr. Weigand: Superior Court of Pennsylvania. I don't know whether it is the supreme. It is in 155 Atlantic (2d), and it is the superior court.

Judge Stanley: The appellate court?

Mr. Weigand: Yes.

Judge Stanley: Was that decision based on the decision of the court that the act violated the Constitution of the [fol. 129] State of Pennsylvania?

Mr. Weigand: No, of the United States and, also, the Pennsylvania Supreme Court, Mr. Bell tells me, did the equivalent of denying certiorari to the superior court, that that is a final decision in Pennsylvania, and the Pennsylvania court predicated it on Adams v. Tanner, and, as late as May of 1960, the Supreme Court of Kansas quoted the Adams v. Tanner ruling that was adopted there and applied it to the unconstitutionality of a state statute which was challenged by a resident of Kansas in Kansas, called the Auctioneer's Itinerant Veteran Act.

Judge Stanley: I assume you will mention that in your brief.

Mr. Weigand: It will be in the brief, Judge.

Judge Huxman: Do either of the parties litigant want to address the Court on the issues before we hear from the attorney general as to his motion to dismiss the attorney general in this action? If not, we will hear from the assistant attorney general as to why you think we ought to dismiss the attorney general.

Mr. Henson: Your Honor, if I may give the Court a [fol. 130] little background. We filed our motion to dismiss, Your Honor, I believe it is Rule 12(b), some time ago, believing at that time that our motion could be heard prior to the time the Court heard this matter on the merits. We were informed by a member of the Court that that would be impossible. Therefore, we filed an answer, which we believe amounts to a general denial of the plaintiff's complaint, and in our answer we have reincorporated the grounds of our motion to dismiss.

Briefly stated, we feel that plaintiff's complaint, which alleges the passage of Senate Bill 366, alleges that the Senate Bill is applicable to him and his business and that the attorney general, having over-all supervision of criminal prosecutions in the State of Kansas, has indicated that said statute, Senate Bill 366, is valid and should be enforced. We would like to call to the Court's attention, first, the fundamental rules often announced by the Supreme Court of the United States, that the judicial power of the United States extends only to cases and controversies. They have said that a case or controversy is a judi- [fol. 131] cial action in which parties present present adverse interests whose contentions are submitted to the Court for adjudication. That is from the case of Muskrat v. United States. And, in a very recent case before the United States Supreme Court, the case of Poe v. Ullman, in 367 U.S. 497, which appears in 29 Law Week 4820, in which the Supreme Court of the United States refused to pass upon the constitutionality of the laws of the State of Connecticut forbidding the sale of anti-contraceptive devices because the plaintiffs had failed to show that there was any real threat of enforcement of that statute against them by the defendant, the Court called—in their opinion, called attention to the series of rules which the Federal courts have developed under which they avoid passing on constitutional questions, unless necessary to decision of, and I quote, "antagonistic demands actively pressed which make resolution of the controverted issue a practical necessity". We think it is inherent in that statement that the demands actively pressed must be pressed by the defendant.

Judge Huxman: Is it your position that the attorney general is not a proper party because there is no immediacy [fol. 132] of enforcement by him, there is no threat of enforcement, and, therefore, there is no controversy, or that, in any event, he isn't a proper party?

Mr. Henson: We feel that this complaint as it is stated, which does not plead that the attorney general has been directed by the Governor of Kansas to enforce this statute—

Judge Huxman: Is it your position that the attorney general will not undertake to enforce this statute?

Mr. Henson: We contend that, under the facts as plead in the complaint, which, I think, is all that our motion to dismiss goes to, do not constitute a cause of action.

Judge Huxman: We have been liberally construing pleadings and, if it is a fact that the attorney general has no intention of enforcing this statute, then there might be a question that there is no actual controversy, but suppose the attorney general, in fact, is intending to enforce it, then it may be an effective allegation that he is doing that—

Mr. Henson: I will tell the Court now that, as the at- [fol. 133] torney general views his powers, he has no right to file a criminal information in the district courts or the county courts of the State of Kansas.

Judge Huxman: He has a right to direct county attorneys to enforce the law, doesn't he?

Mr. Henson: We do not think that he has the right to direct the county attorney to file a criminal case or to file one himself, unless directed by the governor to do so. He does have the right to file ouster proceedings against a county attorney who he feels is not fulfilling the duties of his office, but, because of that right, he doesn't feel that it is his province to usurp the discretion of county attorneys in enforcing the criminal law within their counties. We feel that the Statutes of Kansas give the attorney general the right and the duty to appear before—appear on behalf of the state in the supreme court. We feel the statutes give that right and duty to the county attorney, as far as district courts are concerned. Senate Bill 366 is a criminal statute.

Judge Huxman: Then your position, if I get it, as far as the attorney general is concerned, is that he has no part [fol. 134] in the enforcement of this statute and, therefore, he is not a proper party?

Mr. Henson: We feel, as a matter of law, that he has no part in the enforcement of this statute under the facts plead in the complaint; therefore, he is not—

Judge Huxman: Does he have any part by virtue of his office in the enforcement of the statute?

Mr. Henson: Of this particular statute?

Judge Huxman: Yes.

Mr. Henson: Well, if he felt that a county attorney was being delinquent in his duties.

Judge Huxman: In enforcing the statute—

Mr. Henson: In carrying out the duties of his office, so as to justify that he be ousted from office, in failing to enforce the law, I suppose the attorney general would file such actions, but I can assure the Court that he does not intend to interfere with the lawful powers given county attorneys to exercise their own discretion. It would have [fol. 135] to be a pretty arbitrary and extreme case before he would proceed, and, therefore, because of the view which we take of the attorney general's powers, we feel that we are asserting, at this point, no antagonistic interest to this plaintiff and, therefore, we feel that we are not, at present, involved in the case in controversy with this plaintiff. We have a difference of opinion, perhaps, as to whether this Senate Bill 366 is valid, but differences of opinion, we submit, do not amount to cases for judicial consideration, particularly where a Federal court is asked to annul the validity of a state statute.

Judge Huxman: I get your position, then, to be that, at present, the attorney general is not contemplating any affirmative action looking toward the enforcement of this statute.

Mr. Henson: That's correct, under the facts as they now exist. We feel we do not have the authority to do so under the facts as they now exist.

Judge Huxman: Mr. Weigand.

Mr. Weigand: If Your Honor please, we have searched [fol. 136] for the reason, if the attorney general does not

want the onerous duty of trying to uphold this invalid law, we would welcome it if we could be assured that he would not take any subsequent action, and, in the application for the restraining order, Judge Hill will remember, I asked counsel if he would assure us, if he was not enjoined, he would not take any action to enforce this statute against us, and that was refused.

Now, there hasn't been an overt threat, an actual statement by the attorney general that "I am going to enforce this statute against you", but, in the case that I mentioned in 186 Kan., decided May 1960, by the Kansas Supreme Court, the county attorney of Cowley County, which was the place where that resident lived, and the attorney general of the state, were both named by the state, the Supreme Court of Kansas considered the matter and upheld the contention of the plaintiff as against both the attorney general and the county attorney, that the statute was unconstitutional. We have made a search of the cases where the Kansas Supreme Court has knocked down statutes with respect to the title not being sufficient to encompass all [fol. 137] of the subject matter of the act, and there are several of those cases, and in the case of Capital Gas & Electric, the case was against Boynton, the attorney general, we have found no precedent where the attorney general has been left out, validly, of a state statute. There are cases against city ordinances where he has not been made a party, but, with respect to a state statute, we can find no case where he has been omitted, and we have found cases which lead us to believe that he has a common law duty to enforce every act of the State of Kansas which he considers valid.

Now, if he will state that he considers this invalid, then he would have no duty to enforce it and he could be out, but, unless it is invalid, if it is a statute of the State of Kansas and it isn't prosecuted—Keith Sanborn has got no jurisdiction outside of Sedgwick County. My client may desire to go to Topeka and open one of these offices, may desire to go to Kansas City, Kansas, and open one of these offices. The county attorney there may not prosecute. Will the attorney general permit the statute to rest unenforced? We think not, and we think—we do not have to have an overt

[fol. 138] threat of the chief law enforcement agency of the state with respect to the constitutionality of the state statute—we have a brief on the matter.

Now, if Your Honors would decide that he has no duty to enforce this and he is not going to, so we are protected in the event that you find that this statute is unconstitutional, fine and dandy, we have no desire to bring him in if he doesn't desire to uphold the statute, but we do desire to protect our client's interest against what we consider to be an unconstitutional statute, in the event you so determine that we are correct in that position.

Mr. Henson: Your Honor, it is really not up to us to furnish the type of action that will fully protect the interests of Mr. Weigand's clients. We feel that, if a county attorney in some county other than Sedgwick County would file an action against his clients under Senate Bill 366, that that would be within the discretion of that county attorney, and the fact is that we don't feel that he can get a binding adjudication on all county attorneys of the State of Kansas by joining the attorney general, because we don't think we have power to control all 105 county at-

[fol. 139] torneys in the State of Kansas.

Now, as to this case in 186 Kan. involving the New Goods Public Auction Law, it is true that the attorney general was a party in that action. However, whether or not the case stated cause of action against the attorney general was never raised in that case, was never passed upon by the Supreme Court of Kansas. We are raising it in this case, and we feel properly so. We feel we should not be involuntarily joined as a defendant in any case where an individual wants to assert the unconstitutionality of a state statute. We feel we are proper parties only when we are proposing, or they plead that we are proposing, to take some action which affects their interests. We do not believe the plaintiffs do so in this case.

Judge Huxman: Is there anything else by the attorneys for either the plaintiff or defendants? You have stated your position.

Mr. Weigand: We have a memorandum brief that we can submit on the matter.

Mr. Sanborn: Your Honor, I would like to say that we are sorry about the error into which the Supreme Court [fol. 140] of Pennsylvania has been led, but other courts of last instance, such as the Massachusetts Supreme Court, have viewed the Constitutional issues differently.

Judge Huxman: You can set that out in your brief, of course.

Mr. Weigand: If Your Honors are ready to hear evidence now—

Judge Huxman: Do you want to put on additional evidence?

Mr. Weigand: Supplementary evidence to the record that we made.

Judge Huxman: Before we make a final disposition, suppose we proceed with that.

* * * * * * *

[fol. 141] Judge Huxman: You may call your first witness.

Frank C. Skrupa, called as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Bell:

Q. Will you state your name and address, please.

A. Frank C. Skrupa, Omaha, Nebraska.

Q. You are the same Mr. Skrupa that testified before Judge Hill on a hearing on a temporary restraining order?

A. Yes, sir.

Q. Now, we will attempt here not to be repetitious of any testimony that appears in the previous transcript, since that has been admitted. But, to lay a foundation, you testified at that time that you were engaged in business in Omaha and Wichita, and that your business consisted of what is defined by Senate Bill 366 as the busines of debt adjusting, is that correct?

A. That's right, sir.

Q. Now, disregarding a question as to whether or not the title "debt adjusting" is appropriate, but understanding

that we are talking about the business which is attempted [fol. 142] to be prohibited by the Kansas act, can you give us an idea, a little background, on how long this business has been going on in the United States, how extensive it is, and exactly what it does?

A. Well, sir, the business is nothing new. I personally know of a company in Minneapolis and one in Detroit that has been in existence for a quarter of a century, at least, and they both have excellent reputations and—in both of those states there are regulatory provisions, they are licensed. As a matter of fact, Michigan just recently passed a licensing bill. There have been—in Omaha, there were businesses there long before mine, for, at least—in fact, I know the manager—the ex-manager of the one place, and he tells me they would have been there, I believe, their tenth year. I have been in business there since August of '58. Previous to that time, I had some experience in that business in Detroit, Michigan, and the fellow that I was in business with, my ex-partner, he has a number of offices throughout the east, in Illinois and Indiana and Michigan.

Q. How extensive, if you know, then, is this type of business throughout the United States?

[fol. 143] A. Well, sir, I would say that there is, probably, in every large city, every metropolitan area, there is someone engaged in this practice.

Q. Is this always run by private businesses or—

A. No, sir, it is not. As a matter of fact, in several places, I know of one personally in Phoenix, Arizona, that is a mutual thing that has been set up by a number of creditors, and they have set this up for the purpose of helping themselves and helping people who are their debtors to get out of debt; and I have also heard, in places, although I have no proof of this, that this is also—has also been done by an agency of the Community Chest.

Q. Can you tell us what there is in our society that gives rise to this type of business?

A. Well, sir, I think we all know that the credit business, and the consumer credit business, in particular, has gone up spectacularly since the end of World War II. As a matter of fact, the yearly amount of interest just on consumer debt, not industrial debt or property debt, amounts to eleven billion dollars a year. Now, certainly, this is going

to affect a lot of people and there is going to be a lot of people in debt that are unable to handle this situation themselves.

[fol. 144] Q. What types of people and in what situations are these people when they come to you for financial help?

A. Well, sir, when these people come to us for financial help, they come from all walks of life. I would say, primarily, that they are what you would call the working man, but we do deal with all types of people and from all backgrounds. As a matter of fact, we have clients that come to us who have no financial problem at all, salesmen, for instance, who are on the road a great deal and simply find this an easier method of disbursing their funds to their creditors. We merely set up a payment arrangement with them, they pay us so much each pay day, and we distribute this to their creditors for them. That's all we do, we don't give any other type of advice except financial.

Q. How about the people who actually have a financial or budgeting problem?

A. We attempt to work out a program to fit their bills within their income and satisfy their creditors over a period of time.

Q. Are those people that don't have enough income to meet these payments, or—

A. That's right. They either do not have enough income [fol. 145] to meet these payments, or, I would say, roughly speaking, that 50 per cent of the people that come to us do have enough money to meet these payments, but simply do not have the—either the mental attitude or the ability or the desire to do this themselves, and let it go, and constantly find themselves in economic difficulties.

Q. Where do these clients come from that come to you?

A. Many of them come from referrals. We have—from other clients. Some from other creditors, and, also, we do advertise.

Q. Where are these people referred from? I'm sorry, I didn't—

A. Some are referred from clients that we already have or customers that we already have, and some are referred, quite a few of them are referred, from creditors who realize that these people—they are having some problem.

Q. Have you ever had any referrals from banks?

A. We have, yes; in Wichita, we have had a number of referrals from the Fourth National Bank; in Omaha, we have referrals from everyone, including, by the way, attorneys, collection attorneys.

Q. You have had referrals from attorneys?

A. Yes, sir, very definitely.

[fol. 146] Q. Do you know whether or not there have been any complaints filed against you with the Better Business Bureau in either Omaha or Wichita?

A. No, sir, to the best of my knowledge, there have been no complaints filed.

Q. You have done some checking on this?

A. Yes. Well, we don't do the checking so much as the people that come to us do. We are often told, "Well, we called the Better Business Bureau; you're fine by them".

Q. Can you give us any idea as to the number of people that, in your opinion, you have given some financial assistance to in the last three years?

A. Well, it would depend on where you draw the line and what their own feelings in the matter were, but, simply, it's been over a thousand. If they are clients of ours for at least two or three months, I know that we have given them some help. They don't have to be paid out with us in order for them to receive help.

Mr. Sanborn: Excuse me, I would like to get some idea, so I will understand, whether we are talking about the State of Kansas, something within this man's knowledge or just visiting. I can't delimit it.

Mr. Bell: Plaintiff is attempting to show that this is [fol. 147] a lawful business, that it is recognized as a business which is helpful to the community as a whole, in the broad sense, and that it is not inherently immoral or dangerous to the public welfare, and I think, in that connection, we are entitled to show not only its Wichita operation, but his Omaha operation. I would be glad to have him testify that his testimony applies to both operations. We are simply trying to show a broad prospective for this type of business.

Judge Huxman: I think you have a right to show the general nature of that business, but it seems to me that you

have done that, and going into great detail, broad expanse of the country, is hardly necessary, is it?

Mr. Bell: I will ask no further questions, Your Honor, along that line.

By Mr. Bell:

Q. Mr. Skrupa, can you tell us, you have alleged in your petition that you will be irreparably injured by the enforcement of this statute. Can you tell us what effect just the mere existence of this statute has had on your business?

A. Well, I believe it was in March that we had a total of some 250 accounts, and I think that since that time, approximately, now, we have anywhere from 150 to 175, and, of [fol. 148] course, this adverse publicity has done us no good.

Q. And do you know of specific instances where debtors have refrained from continuing their plan of payment through you merely because of the existence of this statute?

A. Yes, I know of it through the statements of our local manager.

Q. And you have previously testified, which will appear in the transcript, the effect that the enforcement of this statute would have on your business, and I don't think it is necessary to go into that at this time.

Mr. Bell: I believe that is all, Your Honor.

Judge Huxman: Any cross-examination?

Mr. Sanborn: Yes, sir.

Cross examination.

By Mr. Sanborn:

Q. You have not had any referrals from lawyers in the State of Kansas, have you?

A. I wouldn't know that, sir.

Q. You do not know of any referrals from any lawyers, do you?

[fol. 149] A. I, personally, do not know of any. I have heard that there was, but I wouldn't want to say there was.

Q. In the conduct of your business you purchase advertising, do you not?

A. Yes, sir.

Q. And in your advertising you hold out that you can solve the financial problems of persons who aren't able to pay their debts, don't you?

A. Yes, sir, within reason.

Q. And you state by your advertising that you can set up a schedule and cause their debts to be retired, if they will follow your plan which you advertise, is that not right?

A. That's right.

Q. And when people answer these advertisements and come to your office, do you find that they are people who are indebted and are having trouble with their creditors?

A. Yes.

Q. And do you find they are people who have been pressed by creditors for the payment of money?

A. Some of them; not all of them.

Q. About how many of them would you say are people that are worried about not being able to pay their bills and read your ad and come in, or listen to your TV—

[fol. 150] A. All of them have a problem, but it is not necessarily one that they are being pressed. They may anticipate a problem.

Q. We are just discussing, I hope, the ones that just aren't able to take care of their problems.

A. All right.

Q. Now, about what part of your business is that?

A. Well, sir, again, actually, they wouldn't be there unless they thought that they had some problem that they couldn't handle it; they are not going to come to us to pass the time of day.

Q. You hold out that you—

A. Unless I don't understand your question.

Q. You hold out that you consolidate people's debts, too, don't you?

A. Yes, sir.

Q. And you hold out that a person who owes $3,000 can pay as little as $35 a week under your plan?

A. Yes, sir. We say, "You may pay as little as $35 a week".

Q. Do you also hold out that people need no security to come to see you?

A. No, sir, they don't need any security—

Q. That they need no co-signers?

[fol. 151] A. That's right, they do not.

Q. You do have them execute promissory notes, don't you?

A. I think we did at one time. I'm not so sure—in fact, I know it is no longer being done.

Q. When did you stop doing that?

A. Oh, some six months ago, but I might add that we have never attempted to collect on one of our promissory notes after a client left our services.

Q. What is your initial fee that you charge people who come in?

A. We have no initial fee. There is no charge to come into our office and talk over a man's problems.

Q. Did you bring with you, at our request, the records pertaining to Mr. Hedrick?

A. I believe our attorneys have them.

Q. Have you gone over these—the names of these people we submitted to you and attempted to locate the records pertaining to Mr. Hedrick?

A. I say I believe they have them, yes, sir.

Q. I ask you, Mr. Skrupa, whether you went over these with your attorneys—

A. I looked them over, yes.

Q. All right, now. You charged Mr. Hedrick an initial fee when he came in, didn't you?

A. No, sir. If you mean that he give me money the day [fol. 152] he came into my office, perhaps he did; I don't know, sir.

Q. Do you misunderstand my question? I am referring to a fee given to you, not money deposited to pay creditors.

A. Sir, we have no initial fee or initiation fee.

Q. Now, Mr. Skrupa, I don't wish to argue with you. I just am trying to bring out for the Court here that when somebody comes into your office you talk to them and try to persuade them that this plan is a good thing for them, you explain the merits of the plan, don't you?

A. That's right, sir.

Q. And, in explaining the merits of the plan, you adver-

tise to get them and then, once they are there, you attempt to sell your product to them, don't you?

A. That's right, sir, we attempt to sell our services.

Q. And you do so in order to get them to employ you to receive money out of their funds periodically and pay you money for distributing it to creditors?

A. That's right, sir.

Q. You aren't authorized practitioners of the law, any of you, are you?

A. No, sir.

Q. You do not explain to people their rights under the [fol. 153] laws of the United States, do you?

A. No, sir, we don't feel that—we feel that, not being practitioners of the law, that that is not our right to do so. We are merely interested in their debt problems, we are not interested in any legal problems that they might have.

Q. You are interested in selling your product, and the product being to ease their mind of worry over their debts, is that it?

A. That's right, and, also, to set up a budget system for them so that, over a period of time, they can get out of debt completely, or partially out of debt, or to the point where they feel they can handle their affairs.

Q. What is the income range of these people who are the ones that you have described as those that had financial troubles?

A. Sir, we have had—it could be anything; it could be from people all the way, earning social security payments, all the way up to fifteen, twenty thousand dollars a year, in the case of some salesmen.

Q. The people on social security, you set up schedules for them, too?

A. Well, some of them would have a part-time job or something. What I am trying to say is that there is no [fol. 154] limitations as to the amount of their income.

Q. Well, now, you have attempted, because—

Judge Huxman: Now, Mr. Counsel, we have been rather liberal in allowing questions, but the Court feels that this line of questioning has very little value in determining the

fundamental question we are going to have to answer. It is conceded that they do this as a business and for profit, and that people come in for the purpose of having their debts adjusted. They make deposits which are distributed to creditors. Now, isn't that about it?

Mr. Sanborn: I'm sorry, I'm not getting my point across to the Court.

Judge Huxman: What are you trying to develop with this testimony?

Mr. Sanborn: I am trying to develop what they do and have the Court—in our argument, we will certainly expand on what they do not do.

Judge Huxman: I thought the witness had clearly testified what they did, they advertised, and that people in distress came to them and they worked out a plan for them and arranged for weekly or monthly deposits to be dis- [fol. 155] tributed according to the plan, isn't that their business, and collect a fee for it?

Mr. Sanborn: Yes, that is true.

Judge Huxman: Well, isn't that about the business?

Mr. Sanborn: Yes. I was just trying to get the foundation laid, because I wanted to ask him some—

Judge Huxman: Don't pursue it too far, because I think there is no question about the nature of their business.

Mr. Sanborn: Yes, Your Honor.

By Mr. Sanborn:

Q. At our request, before their hearing did you attempt to analyze your business records with regard to how many people signed up with you, but the plans were abandoned within a period of 60 days?

Judge Huxman: Speaking for myself, I fail to see that that has any relevancy whatever. I don't see how—

Mr. Sanborn: May I state the grounds, then, Your Honor, because I know I'm not getting across.

Judge Huxman: All right, state the reason.

[fol. 156] Mr. Sanborn: We think, Your Honor, that the evidence will show that—just what our legislature is trying to guard against in the exercise of its police power by what happens with their plans and as to the—frankly, a Kansas

case upon which we rely and a—which is Depew v. Wichita Association of Credit, and a Massachusetts case upon which we rely, which is the Boston Bar Association v. Home Budget Service, this type of evidence is what the Court considered in arriving at its conclusions that the defendant was, in each instance, engaged in the unauthorized practice of law, and it was just this type of—

Judge Huxman: How many of these plans were abandoned won't show whether they were engaged in the practice of law or not, would it?

Judge Hill: Are you trying to show bad faith on the part of this man?

Mr. Sanborn: We are trying to show, without going into the personal good or bad faith of the individuals, we are trying to show that the plans are bad for the people of Kansas and they don't have—they can't—well, I'm getting into an argument, now, but the fact is that the absence of giving people legal advice that are in a lot [fol. 157] of trouble and can't pay their debts, and the absence of advising about wage earners' plans and bankruptcy laws is a very bad thing for people.

Judge Huxman: It may be, but it surely couldn't be claimed that is practicing law, failing to give advice, would it? It might be bad.

Mr. Sanborn: Yes, sir, certainly. Judge Huxman, I would like to take a minute here. This is the whole point of the cocoanut, the whole point of the case, the very point of it, that a man who gets people—lawyers don't advertise, Your Honor, but they practice law, and part of their practice of law is helping people out with financial troubles, and most clients who come through the county attorney's office, I don't know about Mr. Coulson's office, but most who come through our office, have a lot of financial troubles, and a person who reaches out and gathers in these people, by advertising, to his office, and causes them, sells them on, getting a contract with him, when their problem may very well be that they need to get under a wage earner's plan, or they may need to go into bankruptcy, or they may need to [fol. 158] contest some unwarranted claim that has just got them sick with worry, which they, in this transcript that shows, they don't even attempt to go into, is certainly

not only an encroachment on the practice of law, it is an encroachment upon the stability of the general welfare of the people of Kansas, which the state has a right to protect, and, as the Massachusetts Court said in their case, it is every bit as bad that they don't advise people about their total problem, because they are not equipped professionally to do it, as that—

Judge Huxman: Go ahead and develop it, but don't go into it in great detail, because, to me, it has no value. I have clearly in mind the plan or scheme under which they operate. There is no question about that. That's been developed. How many plans fail, we don't care about that.

Judge Hill: I think it is the very contention of the plaintiff that they do not give any legal advice.

Mr. Weigand: It is, Your Honor.

Judge Hill: They admit just what you say, even though [fol. 159] these people may need or desire legal advice, the plaintiff admits that they give no legal advice, so I think we can assume that.

Mr. Coulson: May I add a word here, Your Honor? Judge Hill has, perhaps, seen the exhibits which were offered at Wichita, I don't know whether the other Judges have or not. These contracts into which the debtors enter provide for a minimum fee of $25. We think the evidence will show that it is not disclosed to the prospective client, as they call him, the debtor, what consequences will occur if the plan fails, and that the usual situation is that the debtor comes in, is charged a fee of $25, the plaintiff sends out form letters to his creditors, his creditors forthwith issue garnishments, and that is the end of the plan, and the plaintiff has the $25. That is what we think the evidence will show.

Judge Huxman: That may be wrong, but does it constitute practicing law?

Mr. Coulson: It doesn't make any difference whether it constitutes the practice of law or not, Your Honor. The question is whether it is a practice which the legislature of Kansas can forbid.

[fol. 160] Mr. Weigand: May I submit, Your Honor, there is nothing in the text of this act that goes to what

counsel has just stated, and it is obvious, from the very simple reading of the act.

Mr. Sanborn: We are not dealing with law in a vacuum, Your Honor, we are dealing with law as it affects people.

Judge Stanley: Aren't you handling this now as though you were prosecuting for violation of this act already and attempting to show bad faith on the part of this witness? Here is an act here that says debt adjusting, which defines it, is unlawful. Now, if there is such a thing as debt adjusting which may properly be done and debt adjusting as you seem to contend this man does it, I don't see how that would enter into the question we have to decide today. I think we are here to decide whether an act which makes unlawful any business, without going into whether that business is properly conducted or not, is a violation of the Federal Constitution.

Mr. Coulson: Your Honor, if he is engaged in a continuing fraud, do you say that you are not to take that [fol. 161] into consideration in determining whether he has a business which is entitled to protection?

Judge Stanley: Isn't this action an action designed to determine whether this act, whether it is this individual or any other individual, whether this act is, in itself, constitutional under the provisions of the Fourteenth Amendment? Now, here, it seems to me, we are going here into a question of whether this man conducts a business in the way in which it should be conducted.

Mr. Coulson: I think what we are going into is what the legislature went into in determining the act should be passed, and what we are concerned with here is the reasonableness of that determination.

Judge Huxman: Here is what the act prohibits: It makes it unlawful for anybody to engage in the business of debt adjustment, and then exempts those engaged in the practice of law, isn't that the spirit of the act?

Mr. Coulson: This man asked to have his business—

Judge Huxman: Have I correctly interpreted what the act provides?

Mr. Coulson: Yes, except "debt adjusting" is not defined [fol. 162] in the act. This man objects to disclosing what debt adjusting consists of, as he practices it.

Judge Huxman: Here is what the act says, in plain words: "Whoever engages in the business of debt adjustment shall be guilty of a misdemeanor". That doesn't make any difference, whether he engages in it in good faith or whether he is guilty of fraud in the carrying on of that business. "Whoever engages in the business of debt adjustment shall be guilty of a misdemeanor and, upon conviction", it sets out the penalty, and then it says, "Provided that the provisions of this act", debt adjustment, "shall not apply to those situations involving debt adjustments engaged in in the practice of law". That is all we are concerned with. We are not concerned with whether they are guilty of fraud in debt adjustment or not.

Mr. Coulson: The evidence is offered to show you what the business of debt adjusting consists of.

Judge Huxman: That's been quite clearly established.

Mr. Coulson: Oh, no, oh, no, only from the standpoint [fol. 163] of what that party wants you to hear.

Judge Huxman: He is asking this witness how many of these plans fail.

Mr. Sanborn: Your Honor, you see, they got up and gave you a very glowing account of this—

Judge Huxman: Let's not say a "glowing account". They didn't give any glowing account. They explained their business in very prosaic and understandable terms, as to what they are doing or attempting to do. Whether they have a right to do that or not, that is our question, but the act specifically says that no one can engage in debt adjustment, putting it in my own words, unless that debt adjustment is done in the lawful practice of the law. Now, that is what the act says, doesn't it?

Mr. Sanborn: Yes, sir.

Judge Huxman: All right. Now, how many plans fail, that is what I am saying, we are going way beyond anything that has any value.

Mr. Sanborn: I can't understand why—

Judge Huxman: Before we proceed with this question, what do you want to show by this line of questioning, fur- [fol. 164] ther? How many plans failed?

Mr. Sanborn: I want to show the experience of it, Your Honor, yes, sir.

Judge Huxman: I think the Court is unanimously of the view that it is not interested in that line of testimony.

Mr. Sanborn: This is one of the things we asked them to look up before trial.

Judge Huxman: You may have asked them to look up a lot of things we don't think are competent.

Mr. Coulson: Your Honor, I think—

Mr. Sanborn: May I read from this New Jersey case, so we can—it states the position better than I can, Your Honor.

In this American Budget Corporation v. Furman, which is in the advance sheets of the Atlantic Reporter, 170 Atlantic (2d), on Page 63, in which these same constitutional questions were raised by the American Budget Corporation, these same Federal questions were raised, the Court, in going into this type of questioning, said, "The legislature could have concluded that, while some debt ad-
[fol. 165] justers performed a commendable service, many others committed frauds and abuses and added little to the smooth functioning of the economy, serving mainly to increase the burden of debt upon the typical user of consumer credit who invokes their aid, without substantially furthering his attempts to liquidate his pre-existing obligations. Suffice it to say that the legislature presumably has weighed all of the information at hand before resolving the question of the need for prohibitory legislation.

"It is possible to quarrel with almost any legislative decision, but debatable questions as to reasonableness are not for the Courts, but for the legislature, which is entitled to form its own judgment.

"Judicial interference in this regard would constitute an invasion of the legislative function. Judicial interposition may be had only where there is no real or substantial relation between the legislative act and a valid public interest under the police power or the measure is, beyond all question, a palpable invasion of rights secured by the organic law. The expediency of the statute is for the law-making
[fol. 166] body alone.

"The challenge to the validity of the statute under consideration, on the ground that it denies the equal protection of the laws, is, in effect, an assertion that the clas-

sification imposed by the legislature is unreasonable. The burden of demonstrating that a statute contravenes the equal protection clause is extremely formidable, as is attested by the long trail of failure. In addition to the strong presumption of constitutionality with which all organic challenges are approached, one who assails a statute on this ground must contend with principles of unusual elasticity."

And I am just trying to follow what the Court put in this judgment.

Judge Huxman: I know, but if you would want to show that this person—that there has been a lot of fraud, I don't know what effect it would have, but that is not what you are trying to establish. You are trying to establish how many of these plans have failed, and so on. That doesn't show fraud.

Mr. Sanborn: Your Honor, I am getting in trouble here. I don't want to argue with the Court. I thought one of [fol. 167] the things you would be considering was whether or not there was any reasonable relationship to the police power of the state in an act of the legislature, in reaching your decision as to whether this was a constitutional enactment, and that was the purpose, to show both sides of the coin.

Judge Huxman: Yes, but what is the reasonable relation there under the police power? What do you claim the legislature tries to stop here? I don't care what some other Court said about it.

Mr. Coulson: The legislature, Your Honor, has said that this is not a—something that can only be practiced by lawyers. We are trying to offer the testimony to show why they said that, and they could reasonably arrive at that conclusion.

Judge Huxman: This testimony doesn't show why only lawyers should do it, doesn't, to me. The act sets out what constitutes debt adjustment. That is what the act says, "These things constitute debt adjustment". A man might enter into that debt adjustment in the best of faith, carrying it out honestly, fairly, without fraud upon any- [fol. 168] body, but, having defined what that business consists of, the legislature said nobody can do that but lawyers.

Mr. Coulson: No, Your Honor, the legislature did not define debt adjusting. The legislature says the business of debt adjusting is prohibited when any of these acts are done.

Judge Huxman: Wait a minute, here is what the act says itself: "For the purpose of this act, 'debt adjustment' means", and then it says what debt adjustment is.

Suppose we give the reporter a recess and the Court a little time to get out of its fog and come back in about ten minutes.

(Thereupon, at the hour of 3:00 o'clock, p.m., the Court took a brief recess.)

Judge Huxman: Gentlemen, here is the way the Court feels about this line of testimony. I will say, for myself, at least, I doubt that there is a disagreement, we fail to see too much relevancy in this testimony. We don't want to shut anybody off, but, if the object is to develop the general nature of the operation of this business, if that is what you are trying to do, how many plans failed and [fol. 169] how many paid out, those ultimate facts, that you ought to be able to stipulate and agree to that, rather than detailed examination. Is that what you are trying to develop, Mr. Attorney?

Mr. Sanborn: Yes, sir, that is a part of it.

Judge Huxman: What else are you trying to develop?

Mr. Sanborn: Well, we would like to develop when they collect the fee and what they do next.

Judge Huxman: For what purpose? What is the object of eliciting—I am asking for my own information.

Mr. Sanborn: The purpose of that is because we think that this will clearly show to the Court that the man gets the ad and then he comes in, and they explain the plan and collect the payment, and then they go out and call the creditors, and all the creditors swarm down on the man and he gets garnishments, and then the initial payment is retained. We think—I am giving you hearsay from another lawyer, that that happened to his client.

Judge Huxman: You are what?

[fol. 170] Mr. Sanborn: A lawyer had this happen to his client.

Judge Hill: I think, if you have a specific fact that you want to prove, I see—counsel probably will stipulate and agree to it, if you have specific cases. He won't stipulate to the conclusion, I doubt that.

Mr. Coulson: We would be glad to ask them, as counsel questions and see whether we can agree, but they haven't furnished us with any information. They've got it present here, and we are trying to bring it onto the record in some fashion. We don't care how it's done.

Judge Stanley: I gather from what has been said here that there had been a request made of counsel to bring here today certain information, is that correct?

Mr. Sanborn: Pertaining to certain named plans or certain named debtors.

Judge Hill: How many?

Mr. Coulson: Four.

Judge Hill: Take them one at a time and ask him.

Mr. Sanborn: I asked about the Hedrick, and then we have Nickerson.

[fol. 171] Judge Huxman: Take each of these four and ask the witness about it, briefly.

Judge Hill: Or ask counsel if he will stipulate to that.

Mr. Coulson: He didn't give us the information, they haven't furnished us with anything.

Judge Huxman: You have the information on those sheets, haven't you, Mr. Coulson, as you claim the facts are?

Mr. Coulson: No, we have to elicit from this witness—we know the experience lawyers have had, but what—what their clients come in and tell them, but this is the only one who can testify to it. He has the records.

Judge Huxman: If you have a particular case, why don't you ask this witness if he knows about that case?

Mr. Weigand: Might we, for the record, Your Honors, state the position of the plaintiff: We have brought into court, at the request of counsel, four files with respect to four people with whom the Wichita office made contracts. We have those files, but we would point out—will be glad [fol. 172] to give them to Court and counsel to look at, but it is the position of the plaintiff that this law does

not deal with the performance of these contracts, that the law prevents the making of a contract—

Judge Huxman: I understand, but we are now dealing with the introduction of those files, the substance of those files, in evidence, aren't we?

Mr. Weigand: We will be glad to give them the files.

Judge Huxman: Why can't you agree as to what those files show without admitting the conclusions they seem to draw? That is what you want.

Mr. Sanborn: Don Farnum, 4270 East Boston, is one of them.

Mr. Weigand: Here is that file.

(Handed to counsel.)

Mr. Sanborn: Are you familiar with this Farnum file, have you reviewed it?

The Witness: Sir, I have looked at it very briefly. If you would show it to me again, I will try to help you.

Mr. Sanborn: I am afraid I'm getting—may I ask these [fol. 173] four files be furnished to some of the other counsel here, and let me go on and conclude my brief examination, and we will save time that way.

By Mr. Sanborn:

Q. Have you previously been advised by Judge Kline in the District Court of Sedgwick County, Kansas, that your business—and prior to the enactment of this statute, that your business, as conducted by you, after the Court asking you some questions during the course of that lawsuit, did constitute the unauthorized practice of law in the State of Kansas?

Judge Huxman: Wait until you answer that question. Counsel wants to make an objection.

Mr. Weigand: To which the plaintiff objects on the ground of incompetency, doesn't tend to prove or disprove any issue before the Court and is not persuasive in any way, shape or form as to whether or not this act is constitutional.

Mr. Sanborn: I have a case on that point of law, Your Honor.

Judge Huxman: Is that an adjudication that Judge Kline made, or just advice he gave?

[fol. 174] Mr. Sanborn: It was an adjudication and decision.

Judge Huxman: Well, you can ask him whether Judge Kline adjudicated that.

The Witness: Pardon me, Your Honor. The definition of "adjudication", please.

Judge Huxman: He asked you if, in a certain case, if Judge Kline didn't adjudicate that your acts constituted the illegal practice of law. They could introduce the judgment, that would be the best evidence, I suppose; if you know such an adjudication was made, I presume you may answer. Do you know whether Judge Kline so adjudicated?

The Witness: By that alleged, sir.

Judge Huxman: Didn't he, in a case pending, make a judicial adjudication?

The Witness: I don't know the term.

Judge Huxman: Rendered a judgment to that effect.

Mr. McRae: I represented Mr. Skrupa at that time, before Mr. Weigand and Mr. Bell were in the case. This was a case which I filed on behalf of Mr. Skrupa to enjoin [fol. 175] an employment of a man by the name of Gordon Oliver, who was employed by us, who later went to a competitor of ours. Our reason for firing him was the fact that he had absconded with funds. My prayer was for—enjoined him from going into competitive work. This evidence that was offered was only offered on the basis of what this man—what we had trained him and what he had done. Judge Kline, after hearing the facts of the case relevant to this employment, stated that Mr. Skrupa had not come into that court with clean hands, that he, not only as a Judge of the 18th Judicial District, but as president of the Sedgwick County bar, stated that he believed this man was practicing law and that his business was of that nature, and that he was not entitled to this equitable remedy. I took an appeal from that decision, the man was later fired by our competitor. I felt the case was moot, and I did not take it on to the supreme court. That's the full facts of that case, Your Honor.

Judge Huxman: Is that decision by Judge Kline a part of the judgment?

Mr. Sanborn: Yes, sir.

Judge Huxman: Well, introduce the judgment.

[fol. 176] Mr. Sanborn: We are having it marked now, Your Honor.

Judge Huxman: You may introduce it, Judge Kline's judgment; it will speak for whatever it says, and then we will consider the relevancy of it.

Mr. Sanborn: Thank you, Your Honor.

By Mr. Sanborn:

Q. Mr. Skrupa, this was before the 1st day of July, 1961, wasn't it?

A. That's right.

Q. And it was before the effective date of the statute which you are now attacking—

A. Correct.

Mr. Sanborn: Judge, stop me if you have already ruled on this.

By Mr. Sanborn:

Q. What do you do when you call up these creditors, if the creditors just refuse to go along with your proposal for this debtor?

A. Well, sir, my personal experience is that we don't have any creditors that refuse to go along with it.

Q. You don't have any that refuse to go along with it?

A. That's right. Sometimes it takes a bit of persuasion, but usually we can work it out.

[fol. 177] Judge Huxman: A littled louder.

The Witness: Sometimes it takes a little persuasion, some talk back and forth between us and the creditors, but usually we can work it out.

By Mr. Sanborn:

Q. You negotiate for your client, then, with the creditor until you get it worked out?

A. Yes, sir.

Q. What use do you make of the power of attorney which is in evidence as Defendants' Exhibit F?

A. Sir, when that was in use, and it no longer is, we never made any use of it.

Q. Mr. Skrupa, I want to be perfectly clear about your testimony. Did you intend to testify that substantially all of the creditors go along with your proposals?

A. Yes, sir. After all, if they didn't, we wouldn't be in business.

Q. And do you have in mind that you testified in a previous hearing before Judge Hill as to the subject matter of people not going along with your credit—creditors not going along with your plan?

A. Are you referring to the testimony—

Q. In this transcript you offered.

A. I don't recall, sir, I'm sorry; you would have to point [fol. 178] it out to me. I'm not sure what you are talking about.

Q. Well, what do you do when they won't go along with the plan?

A. Sir, we don't do anything. This doesn't happen. Through experience, we know what creditors will do and what they will not do. And, if they should refuse for some reason, which wouldn't happen in one case out of a thousand, to take the payments from us, we merely tell the debtor to make some arrangements on his own, to go over there and try to straighten it out.

Q. And what do you do with the money that has been turned over to you by the creditor which you have now and—pardon me, the debtor, and have unsuccessfully offered to the creditors?

A. You are saying "creditors", sir. A moment ago it was "creditor".

Q. I'm not trying to mislead you. I want to know, in a situation where the creditor doesn't go along, what you now, at this point, do with the money that you have collected from the person who is in debt.

A. We disburse it to the other creditors, and then we would probably reduce his payment to take into account that this other creditor didn't go along with it. Under- [fol. 179] stand, this is a very rare thing when this hap-

pens, and I am not alleging that this is common practice of ours.

Q. Well, suppose—does it happen that you have these people that are your clients and the creditors don't agree to your terms, and they file suit against them and issue garnishments?

A. It's happened they have been garnisheed, yes, sir.

Q. What do you do in that event?

A. We try to work it out.

Q. Well, how do you go about working it out, after the—the creditor has garnisheed the defendant? How do you go about working it out?

Judge Huxman: Mr. Attorney, I fail to see any relevancy to that question. If my associates agree, you can have an answer.

By Mr. Sanborn:

Q. With whom do you attempt to work it out?

A. The creditors, sir.

Q. You don't lend money to these people, do you?

A. We do not lend money, sir. We occasionally have advanced them money, but under no circumstances is it a loan with interest being drawn. By that I mean, if we have a payment to meet and the man gives us $30 and his car pay- [fol. 180] ment is $31.27, we may advance him this $1.27.

Q. Well, since you loan him no money, what is the occasion for—what are you getting at in your ad about that he needs no co-signers?

A. Sir, we don't want to be confused with a loan company. That is why that is in the ad. Our ad also states we are not a loan company. Maybe that one doesn't, but most of them do.

Q. And what do you mean the person to gather from your statement in your ad, "No security"?

A. Sir, I think that speaks for itself, "No security", no security.

Q. You are familiar with the commercial word, aren't you, Mr. Skrupa?

A. To some degree.

Q. And you are familiar—

Mr. Weigand: May I call the Court's attention to the fact, and I think Mr. Sanborn will have to agree with me, that he asked these same questions and got these same answers in the transcript, and we were only to amplify it and not duplicate it. Isn't that correct, Mr. Sanborn?

Mr. Sanborn: I didn't recall it, as such, or I wouldn't have repeated anything. If counsel recalls it, Your Honor, [fol. 181] certainly, I have no reason to believe that his memory is faulty and I won't ask anything further along that line.

Judge Huxman: Are you offering this exhibit in evidence?

Mr. Sanborn: Yes, sir, after I have the witness identify it and offer it to adverse counsel.

By Mr. Sanborn:

Q. I hand you what has been marked by the Clerk for identification as Defendants' Exhibit I, consisting of two pieces of paper. Do you recognize those as being your business forms?

A. Yes, sir.

Q. What is the smaller thing in the form of a receipt? Is that one of your regular—

A. That is a receipt, yes, sir.

Q. And do you keep duplicate receipts in your record keeping?

A. Yes, we do.

Q. Do you recognize—is this a plan on Exhibit I, or what is this called, these figures of yours? Is that a work sheet?

A. No, sir, I have no idea what this is or who wrote it. It is on our form, but I wouldn't say who wrote it; I don't know.

Q. Well, do you make lists of the indebtedness?

[fol. 182] A. Yes, sir, but not on this kind of sheet. We have a specific form for that.

Q. You do have a certain method of figuring it out, don't you?

A. Certainly, certainly.

Q. And would you look at these figures under Listed

Indebtedness and the statement of charges, and would you state whether or not—

A. Sir—

Q. Please let me ask the question. Would you state whether or not this is a work sheet, the way you fill them out?

A. No, sir, it is not a work sheet.

Q. How do you arrive at your charges, then?

A. Our charges are arrived at on a basis of what we feel—what effort we are going to put in the case.

Q. That would be the difficulty of the case—

A. Yes. We can't, obviously, get it down to a dollar or a dollar-and-cents thing. We try to give it a rough estimate and charge accordingly.

Mr. Weigand: If the Court please, the plaintiff fails to see the relevancy of the amount of the plaintiff's charges to the validity of this law. If he charges one penny consideration for the distribution of money, he violates this [fol. 183] law, and, whether he charges one penny or $10,000, it is still a violation of the law, and this is not up for consideration with respect to the reasonableness of a limitation on charges imposed by the legislature, which would have been a valid enactment by the legislature. They prohibited any consideration, so the adequacy or excessiveness of the consideration, I submit, is not properly before Your Honors in a determination of the constitutionality of this act.

Judge Huxman: Well, the exhibit hasn't been offered in evidence. A lot of questions have been asked about it.

Do you offer this in evidence?

Mr. Sanborn: I was trying to lay a foundation.

Judge Huxman: I think the witness has answered, it is not on his form. He has answered what it is. Now, if you are offering it in evidence, we are interested in it, so we can rule on the objection.

By Mr. Sanborn:

Q. Well, you recognize—this is one of your official receipts?

A. This receipt is, as far as I know, one of our receipts,

yes. This here is our letterhead, but this is not the form [fol. 184] on which we take down the person's indebtedness and his financial obligations. This is merely a sheet of paper with a lot of numbers on it. I don't know what that is.

Judge Huxman: I think that is clearly answered.

By Mr. Sanborn:

Q. Would you please refer to Exhibit K, then, which is the same file, is it not, as this receipt?

A. Yes. This is a gentleman by the name of Nickerson, right? Now, what can I tell you?

Q. Does this, by reference to his file and the receipt given to Mr. Nickerson in the course of your business—he would have the receipt, wouldn't he?—does that indicate to you that they are part of the same transaction?

A. I would say that this is a list that, possibly, he made before we took down a list, or something of the sort, yes, sir. He may have been sitting there waiting to talk to someone and just made this list himself; I don't know, but the two do match here, yes.

Q. Then, being familiar with the operation, having set up the operation of your business, are you able to tell us whether or not Exhibit I constitutes a part of the file of [fol. 185] Mr. Nickerson which is designated for identification as Exhibit K?

A. Did this come out of the file?

Q. I am not permitted to testify. You give the customer the receipt, don't you?

A. Certainly, the receipt is his. That still doesn't prove what this thing is.

Q. I was trying to get you to state whether this data on this matches what you have in your file.

A. This is much more important than this (indicating), as far as we are concerned.

Judge Huxman: Mr. Witness, does it match?

The Witness: Yes, sir, it does match.

Judge Huxman: All right, that answers the question, then.

By Mr. Sanborn:

Q. Thank you. What--does that "Chg" mean charge?

A. I couldn't tell you, but I can tell what the charge was made.

Q. Was the charge—

Mr. Weigand: Now we are coming to the relevancy of my objections, is the amount of the charges relevant to the [fol. 186] determination of the constitutionality of this act?

Judge Hill: It is admitted that they do charge a fee.

Mr. Weigand: Yes, they do.

Judge Hill: The amount, I think, is immaterial.

Judge Huxman: Mr. Attorney, do you offer that in evidence, that exhibit?

Mr. Sanborn: I would like to.

Judge Huxman: Well, you have that privilege.

Judge Hill: For what purpose?

Mr. Sanborn: What I was trying to establish is that this is a part of this transaction, and I want to ask some questions about his business card and what happened to the money—

Judge Huxman: You have an exhibit there. We ought to fix that exhibit. Either offer it in evidence or not, so the Court can rule on it.

Mr. Sanborn: I will offer in evidence Exhibit I.

Judge Hill: For what purpose?

Mr. Sanborn: Well, I believe it has been identified by the witness as a part of this transaction, in this File K, [fol. 187] which is Raymond Nickerson's file, and there is one notation on there, what I am trying to get around to, so I can ask him what this particular—if you see the addition on it at the end of their charges, there is a six-two-o-two added, and we want him to tell us, and "Pd" over at the left—

Judge Huxman: Now, the witness has several times testified that he knows nothing about that sheet of that exhibit.

Do I understand you correctly?

The Witness: That's right, sir.

Judge Huxman: And he has testified repeatedly he doesn't know anything about that.

Mr. Sanborn: I thought he might be familiar with the notations used.

Judge Huxman: Ask him whether he is familiar with the notation on it. It seems to me—

Mr. Coulson: Withdraw the offer.

Mr. Sanborn: May I just withdraw that and go on to his file?

Judge Huxman: Certainly.

By Mr. Sanborn:

Q. Now I am referring to Exhibit K, the file you brought to court today, called the Raymond Nickerson file.

[fol. 188] A. Yes.

Q. Now, in the file there is a card?

A. Right.

Q. With his wife's name on it. What does it show on 12-8? Does it show you received $70 from him?

A. The card shows we received $70, according to the way we keep books, yes, sir.

Q. And that was on December 8?

A. Right.

Q. That was the same as the receipt?

A. Right. Well—

Judge Huxman: Now, you withdraw that—this is K. That doesn't have reference to K, does it?

Mr. Sanborn: He testified that they have duplicate receipts, Your Honor, and I withdrew that, and I assume he would have his duplicate receipt. Maybe it is just a redundant question.

Judge Huxman: Having withdrawn that, I don't think you ought to try to connect this with that. I was wondering if that is what you are—

Mr. Sanborn: I was trying to connect the date of it, and was thinking they had duplicate receipts—I don't [fol. 189] want to get in the position of arguing with the Court, Your Honor, because I don't think it is lawyer-like.

Judge Huxman: I am trying to find out what you are trying to do, sir, that's all.

Mr. Sanborn: I am trying to demonstrate to the Court, by this witness's testimony, what he knows about the files

of his business here, and the method that they used, and that is the purpose of this examination, as to what they do with the money.

Judge Huxman: Well, ask him.

By Mr. Sanborn:

Q. We have established you received $70 from Mr. Nickerson?

A. That's right.

Q. And what happened to Mr. Nickerson's case as reflected by your notation on your file card?

A. Mr. Nickerson later took bankruptcy.

Q. What happened to the $70?

A. Sixty-two dollars two cents of it was paid to the Commercial Credit Corporation on December 8, 1960.

Judge Stanley: Excuse me, was Commercial Credit Corporation one of the creditors listed there?

The Witness: Yes, sir.

[fol. 190] By Mr. Sanborn:

Q. Now, what happened to the rest of the money?

A. Seven dollars ninety-eight cents went towards our fee.

Judge Huxman: Went towards your fee?

The Witness: Yes, sir.

Mr. Weigand: Now, Your Honor, the purpose of all this is for them to demonstrate the amount of the charges which, we submit, is not a proper matter of inquiry. We've gotten one in there; if the Court wants them, we will stipulate to the other three.

Judge Hill: Why don't you stipulate to them?

Mr. Weigand: But I would like to reserve my objection.

Judge Hill: You may.

Mr. Weigand: We will stipulate the amount of those charges on each of those, as shown by those files.

Mr. Coulson: Can you tell us what happened to the money? I don't find any record in there about what happened to the money. Do you know anything about those?

[fol. 191] Mr. Weigand: The money was distributed, as shown in there, to respective creditors that were specified by the debtor, and the amount remaining between that and the amount received was their fee.

Judge Stanley: Mr. Weigand, I assume you are familiar with these files.

Mr. Weigand: I am not, Your Honor. I didn't see them until this morning. Mr. Bell—

Judge Stanley: Mr. Bell, can you stipulate as to the amount received, the amount paid to the creditors and the amount that was charged?

Mr. Bell: Your Honor, we should first note for the record that the amount received by Credit Advisors as their charge was received by them to be applied on the total charge which was contracted for by them, and I will be glad to go through each of these files, reserving our objection to the relevancy of it, and state for the record exactly what was the situation on each of them.

Judge Stanley: It will save a lot of time on each of those.

[fol. 192] Mr. Bell: In the case of Raymond Nickerson, according to the files of Credit Advisors, Mr. Nickerson owed some $1972, for which he—and for Credit Advisors' services in disbursing money to the creditors which he specified, Credit Advisors was to receive a total sum of $165. Mr. Nickerson made a payment to Credit Advisors on December 8 of $70, sixty-two-o-two of which was distributed to Commercial Credit Corporation, one of the specified creditors of Mr. Nickerson, and $7.98 was retained by Credit Advisors to apply on their total fee.

Judge Huxman: Take the next case.

Mr. Coulson: Let's finish this one. How long was the plan in operation?

Mr. Bell: We will stipulate that Mr. Nickerson made no further payments and that he later took bankruptcy.

Mr. Coulson: How much later?

Mr. Bell: December 27, 1960.

Mr. Coulson: Now let's do the same as to these others.

Mr. Bell: In regard to—

Judge Huxman: Are we ready for the next case?

[fol. 193] Mr. Coulson: Yes, Your Honor, he has it.

Judge Huxman: All right, take it up and stipulate as to that.

Mr. Bell: With regard to Oliver Phillips, Credit Advisors entered into a contract with him on January 14, 1961, his total indebtedness, or total of the indebtedness to the creditors which Mr. Oliver Phillips wished Credit Advisors to distribute money to, was $3153. In consideration of the services of Credit Advisors, in distributing that money according to a plan, they were to receive a total fee of $275. Mr. Oliver—Mr. Phillips, under that plan, made a payment on February 7 of $50, March 11 of $15, March 21 of $25, April 12 of $75, May 16 of $50, June 17 of $60. The payment of June 16—June 17, which I mentioned, was a check in the amount of $60 drawn on the Valley State Bank of Belle Plaine, Kansas, payable to Credit Advisors; that, immediately after receiving this check, Credit Advisors paid out money on the basis of it to creditors, and a few days later received the check back from the bank "Payment Stopped". To apply on Credit Advisors' fee, [fol. 194] Credit Advisors, on February 7, I believe, took seven dollars, either seven or nine dollars, it looks like seven. On March 11 took two dollars, on March 21 took five dollars, on April 12 took seven dollars, on May 16, nine dollars, on June 17, seven dollars, and then they received no reimbursement of the $60 which had been credited, because of the insufficient fund check.

Mr. Coulson: When did he go into bankruptcy?

Mr. Bell: He went into bankruptcy on June 22, 1961, some six months after the initiation of the plan, and I might add that the plan required, according to the contract with Credit Advisors, the payment of the sum of $75 per month, which Mr. Phillips did not comply with.

Mr. Coulson: Let's have the next one.

Mr. Bell: Donna and Don F-a-r-n-u-m. On May 18, 1961, Credit Advisors entered into a contract with Mr. and Mrs. Farnum, listing a total—listing total debts to specified creditors of $2200, for which they agreed to pay Credit Advisors a maximum fee of $150, to be taken out of payments made, payments to be made at the rate of $28 per [fol. 195] week. That on May 20 these people made a credit —payment to Credit Advisors of $21 per week, that Credit

Advisors disbursed $19 of that to creditors specified and retained two dollars of that amount to apply on their fee.

Mr. Coulson: Did he go into bankruptcy, too?

Mr. Bell: No. According to our records, this person was garnisheed by an attorney at law, and she then—he or she went to the county attorney for help, and the county attorney then was to take over the handling of the matter.

Mr. Coulson: All right.

Mr. Bell: Jesse Epperson entered into a contract with Credit Advisors on April 24, 1961. The total indebtedness listed of $500, for which they were to pay Credit Advisors a total fee of $50, to be deducted from payments. They were to pay $20 every two weeks on their indebtedness. The file reflects that payment of $20 was made on April 29, May 15, May 29, June 15, July 10, July 27, that $50 of those payments was paid to Don Clark, attorney, who is one of the intervenors in this action, I believe, that he ac-
[fol. 196] cepted those, that $40 of the total amount paid was paid to B. W. Acceptance Company and that $30 was retained by Credit Advisors to be applied on the total fee.

Mr. Coulson: What happened to that plan, is it still in operation?

Mr. Bell: The last payment on that was made on July 27, and we have no further records indicating that anything has happened to it.

Judge Huxman: Is it agreed that these facts related by Mr. Bell, by all counsel, that they are the stipulated facts in these cases?

Mr. Weigand: Yes, Your Honor, subject to our objection as to their relevancy and materiality.

Judge Huxman: So stipulated.

Is there anything else of this witness, now?

Mr. Sanborn: We would like to inquire whether counsel has been able to ascertain from the records of Mr. Skrupa how many of these plans failed within 60 days.

Mr. Bell: No. In order to do that, we would have to go through each and every case since they have been in
[fol. 197] Wichita, and I believe there's 855 that have been signed since they have been in Wichita, and we have not attempted to go through each of those files to ascertain. I

believe the request that you made of us was made a day before yesterday.

Judge Huxman: Is there anything else of this witness?

Mr. Coulson: Does the witness know what percentage o. anything about it?

Judge Huxman: Does the witness know what percentage of these 855 plans failed?

Can you anwser that?

The Witness: Your Honor, it depends upon the interpretation you put on the word "failed". Many of these people that come to us do not complete these plans. In fact, a very small percentage go all the way through with this. There is no good reason why they should go all the way through with it. Where they find themselves in a position where they no longer need our services, they quit, and that's fine by us; if we have done them some service, we are happy and they are happy. And we have dozens, or, in fact, hundreds of clients that have done this and would be glad to give us a recommendation.

[fol. 198] Mr. Coulson: We are trying to find out what percentage failed within the first 60 days.

The Witness: Sir, I don't know, very honestly, because I would be speaking about Wichita and I don't know what that is, sir.

Judge Huxman: That answers the question. The witness can't answer that.

Anything else?

Mr. Sanborn: I would like to offer in evidence Exhibit H.

Judge Huxman: What is that?

Mr. Sanborn: That is Judge Kline's memorandum opinion in that case.

Judge Huxman: I thought we received that in evidence, didn't we?

Judge Stanley: I thought we had.

Judge Huxman: If it hasn't been received, let it be offered. Are there any objections to its receipt?

Mr. Weigand: Yes, Your Honor. This is not, as I understand it, the journal entry of judgment entered by the Court. It is merely what purports to be a transcript of a statement which the Court made from the bench.

[fol. 199] Judge Huxman: Is the authenticity or correctness of the transcript challenged?

Mr. Weigand: I couldn't challenge it. I wasn't there. The counsel who was there, Mr. McRae, has made a statement to the Court as to what has transpired in that case.

Judge Huxman: It is not a certified transcript?

Mr. Weigand: Not a certified transcript, and, Your Honor—if Your Honor please, either a Justice of the Peace or a District Court of Kansas decision in an injunction case, with respect to the doctrine of unclean hands, regardless of what did it, we submit, is not relevant or material to any determination of the constitutionality of this statute.

Judge Huxman: Is that to your best knowledge?

Mr. McRae: I think that is what the Court said, Your Honor.

Judge Huxman: You think that is what the Court said. Then do you still object to it on the ground that it is irrelevant and immaterial?

Mr. Weigand: Yes, Your Honor, and there is no basis [fol. 200] for the consideration of this Court as to a determination of the validity or the constitutionality of this statute.

Judge Huxman: The Court will receive it for whatever value it may have. That will be determined.

(Defendants' Exhibit H, having been marked for identification, was offered and received in evidence.)

Judge Huxman: Is there anything else?

By Mr. Sanborn:

Q. Would you please state, what was the purpose of having the person put on their form, the one being referred to is the financial statement, which is called in the record D, Defendants' Exhibit D, that this is a complete list of all of their creditors and that they are not insolvent or bankrupt?

A. Well, it is because we want a complete list of what their obligations are. We cannot assume that we know what we can do for them unless we know what their complete financial problem is. That is only to clarify—because we mail these things out.

Q. What is the purpose of this certification by them that they are not insolvent or bankrupt?

[fol. 201] Judge Huxman: That they are what?

Mr. Sanborn: Not insolvent or bankrupt.

A. Well, I can't actually answer your question, sir. We have used that form for so long, I would have no answer for it.

By Mr. Sanborn:

Q. Did you make up these forms?
A. Sir, part of these forms are the same forms that were used by a partner of mine, and they have been in use for quite a number of years. They have been changed through the years, to some degree, but some of the material on them just stayed on them.
Q. You did that?
A. I did what, sir?
Q. You have made the changes in them from time to time?
A. Yes, sir, I have.

Mr. Sanborn: We have no further questions, Your Honor.
Judge Huxman: Are there any further questions of this witness?

Redirect examination.

By Mr. Bell:

Q. I would just like to ask the witness, did you or your attorney change these forms, Mr. Skrupa?

Judge Huxman: I didn't get the question.
[fol. 202] Mr. Sanborn: That is objected to as leading.

By Mr. Bell:

Q. Did you or your attorney change these forms at any time when it was necessary to do so?
A. On the advice of counsel, they have been changed, yes.

Mr. Bell: That is all I have.
Judge Huxman: Is there anything else?
The witness is excused. You may step down.

(Witness excused.)

[fol. 203]

COLLOQUY BETWEEN COURT AND COUNSEL

Judge Huxman: Is there anything else to be offered, or is this it?

Mr. Weigand: That is all the evidence the plaintiff offers, Your Honor, except I have forgotten one thing. We have for identification here, under the heading "Memorandum Brief", it is really an actual copy of the Oklahoma Statutes Annotated, Title 24, Chapter 1, Section 15, which we think is evidence, Your Honor, with respect to one issue which they have raised, if it is material. I might say this in connection with the exhibit, when the Clerk finished marking it, I don't know whether this Court, being a court of the United States, can take judicial knowledge of the Oklahoma law. If it can, I don't have to offer—

Mr. Coulson: I will agree that they can, that they can take judicial notice of the law of all states.

Judge Huxman: I hope you are not asking us to pass on an Oklahoma statute, too.

Mr. Weigand: No, Judge. I wanted to call to the Court's attention, in the form of evidence, that the Oklahoma statute uses the same definition of debt pooling, they all put a different label on the deal, but they call the act the same, [fol. 204] and then, instead of calling it "the practice of law", they forbid lawyers to do it and let nobody but retail credit organizations do it.

Judge Huxman: Do you offer this exhibit?

Mr. Weigand: We offer this exhibit on the question of whether or not debt pooling is defined in the act as the practice of law—

Judge Huxman: Any objection?

Mr. Coulson: I object to introduction of the exhibit, but I agree that Your Honors can take judicial notice of the laws of all states.

Judge Huxman: We are supposed to take judicial knowledge of it, but I believe it will help us to know what the law is, if we have a copy of it, so it will be received for whatever it may be worth.

Mr. Weigand: That concludes our evidence.

Judge Huxman: That concludes the evidence of all the parties?

Mr. Henson: Your Honor, for the purposes of our motion to dismiss, we ask the Court to judicially notice the [fol. 205] Statutes of Kansas, the powers of the attorney general and the county attorney.

Judge Huxman: Does the defendant have anything—I thought the defendant said they rested, had nothing further to present, no further evidence. That is what I understood.

Mr. Weigand: We have segregated, as to legal propositions, five briefs which we are in a position to submit—

Judge Huxman: Mr. Weigand, I think the Court is in agreement that we may have an inkling of the issues as presented by the parties, and it is a difficult question, it is not easy, and I doubt whether you would care to make oral argument at this time. I think I speak for my two associates when I say that it would be more helpful to us if, after this hearing, the parties would submit written briefs in support of your various contentions.

Mr. Weigand: We are in a position to submit in triplicate, now, our initial brief, and then, if Your Honors are going to give them additional time, we would like to have five days to file a reply when we get their briefs. We will submit copies.

[fol. 206] Judge Huxman: Are you ready to submit your brief at this time in triplicate, in support of your position?

Mr. Weigand: Yes, Your Honor.

Judge Huxman: How long does the defendant want? And I suppose—will the defendant and amicus curiae work together in your brief, or are you going to file separate briefs?

Mr. Coulson: I think we will have to file separate briefs, Your Honor, because the one issue, the state court issue or the diversity issue, about the validity of the State of Kansas, is a problem we feel the bar association has no concern with.

Judge Huxman: And how long does the defendant county attorney want to submit a reply brief?

Mr. Coulson: I would like to know how long Mr. Weigand's brief is that we are going to have to reply to.

Mr. Weigand: As I say, we have five briefs, one segregated as to each proposition of law, so, if the Court don't like to consider one proposition, they won't have to read it all. We have divided it into the matters. We think that [fol. 207] this matter of the illegal practice of the law, for example, Your Honor, is one where they can't raise it, because it isn't in the title, and that act couldn't be—

Judge Huxman: Mr. Weigand, do you have a complete brief ready to file on your position?

Mr. Weigand: Yes, Your Honor.

Mr. Coulson: What I am trying to find out is how big is it, how many pages, in toto?

Judge Huxman: First, let me ask the defendant, the county attorney, how long do you want for your brief, if you are furnished a copy of the plaintiff's brief, now?

Mr. Sanborn: I'd like to have about 20 days, Your Honor, not because it will take that long to do the work, but because I am not going to be back in the office for a while.

Judge Huxman: Going on vacation?

Mr. Sanborn: Well, a few days.

Judge Huxman: The defendant, the county attorney, will be given 20 days from today to file a brief. That is on the assumption that you will be served with a copy of plaintiff's [fol. 208] brief at this time.

Mr. Sanborn: Your Honor, we raised something in this case in our answer. They posted a bond. It was supposed to secure the State of Kansas any costs occasioned by this, if the state should prevail, and I haven't briefed the law on it, but I did set out that we have undergone expense, and will, and I would like leave, after a brief of the law, if I think Your Honor should rule on that, to just submit what the expenses were; that will be in the nature of evidence, actually.

Judge Huxman: Well, I supposed that would come up when you asserted a claim against them on your bond.

Judge Hill: I think that will be after a decision in the case.

Judge Huxman: That wouldn't be raised until we reach a decision. If we rule for the plaintiffs, then they are not liable on t ie bond.

Mr. Sanborn: I realize that.

Judge Huxman: If we rule for you, then you can assert on that bond such items as are appropriate.

[fol. 209] Mr. Sanborn: Yes, sir. I didn't think you would want to come back together for—

Judge Hill: We can consider that matter.

Judge Huxman: In any event, we can't reach that now.

Now, how long does the attorney general want on its brief?

Mr. Henson: Your Honor, we feel we can have a brief on file within seven days on our motion to dismiss.

Judge Huxman: Take ten days from today. You mean from today, seven days?

Mr. Henson: From today.

Judge Huxman: The attorney general is given ten days from this date to file a brief in support of his position.

Now, Mr. Coulson, how long do you want for amicus curiae?

Mr. Coulson: I will need, certainly, no more than 20 days allowed—

Judge Huxman: Twenty days is sufficient for you, sir?

Mr. Coulson: Twenty. I say I'll take no more than that.

[fol. 210] Once I can find out how big this thing is, I'll have a better idea.

Judge Huxman: Knowing you as I do, Mr. Coulson, I think you can answer any brief they could serve on you within 20 days.

Mr. Coulson: I'll file something, Your Honor. Your Honor will determine whether it is an answer.

Judge Huxman: If you find you can't, if you will ask the Court, we might give you 21, or such a matter.

Now, the plaintiff may have ten days, or which will be 30 days from this date, to file a reply brief, ten days after the defendant's and amicus curiae brief are served on plaintiff, to file a reply brief, if desired.

Judge Stanley: Mr. Weigand, you can include your answer to the attorney general's brief in your reply brief, can you?

Mr. Weigand: Yes.

Judge Huxman: So you will have 30 days from today to reply to the attorney general and to reply to the briefs on behalf of the defendants.

Upon the receipt of these briefs, the case will be submitted [fol. 211] to the Court on its merits for decision.

Is there anything remaining undisposed of that you wish to call the Court's attention to, gentlemen, before we adjourn?

Mr. Coulson: Not from us.

Mr. Weigand: Should I deliver these three copies of the brief to the Clerk?

Judge Huxman: Yes.

Mr. Sanborn: Will we get one of those?

Mr. Weigand: Yes.

Judge Hill: Do you have an original and three copies?

(Colloquy was here had off the record.)

Judge Huxman: If you will file the original and two copies, I, living here, I can take the original and the Clerk will send the two copies to Judge Stanley and Judge Hill.

Is there anything else, now?

Now, the Court does appreciate the efforts of the parties. I want you to know that we haven't been a bit impatient with anybody. Naturally, we have been somewhat confused, [fol. 212] but that is due to our ignorance of the issues. We do appreciate the presentation.

Upon receipt of these briefs, the problem becomes ours.

If nothing further, please announce the Court is in recess, subject to call.

(Thereupon, at the hour of 4:00 o'clock p. m., the Court stood at recess subject to call.)

Reporter's Certificate (omitted in printing).

[fol. 213] Clerk's Certificate (omitted in printing).

[fol. 213a]

PLAINTIFF'S EXHIBIT 1

MEMORANDUM BRIEF

OKLAHOMA STATUTES ANNOTATED, Title 24, Chapter 1, Section 15, reads as follows:

"Title of Act: An Act relating to debt pooling; prohibiting any person, firm, company or corporation from engaging in or operating a debt pooling business; making violation of Act a misdemeanor and fixing the penalty therefor; defining term debt pooling as used herein; and declaring an emergency. Laws 1957, p. 161 hgrein; and declaring an emergency. Laws 1957, p. 161."

"§ 15. *Debt pooling—Prohibition*

"No person, firm, company or corporation shall engage in or operate a business known as debt pooling. Laws 1957, p. 161, §1. . . ."

Section 16 reads as follows:

"§ 16. *Debt pooling—Definition*

"Debt Pooling is defined as making a contract with a particular debtor whereby the debtor agrees to pay a sum or sums of money periodically to the person engaged in the debt pooling who shall distribute the same among certain specified creditors in accordance with a plan agreed upon and the debtor further agrees to pay such person any valuable consideration for such services or for any other services rendered in connection therewith. Laws 1957, p. 161, § 2.

"§ 17. *Debt Pooling—Penalties*

"Any person, firm, company or corporation violating any of the provisions of this Act shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), or by im-

prisonment in the county jail for not more than thirty (30) days, or by both such fine and imprisonment. Laws 1957, p. 161, § 3.

"§ 18. *Debt pooling—Application of Act*

"The provisions of this Act shall not apply to any retail merchants' trade association or a nonprofit association formed for the purpose of collecting accounts and exchanging credit information. Laws 1957, p. 161, § 4."

[fol. 213b]

DEFENDANT'S EXHIBIT A

(Letterhead of Credit Advisors, Wichita, Kansas)

Gentlemen:

We are in Wichita to offer financial budgeting and management service to those who feel the need for such assistance.

Credit Advisors does not function as a lending or collection agency. What we do is to set up a budget for the debtor after having determined, with his assistance, what he reasonably needs for monthly living expenses. The remainder of his income is directed to us to pay his creditors, payments being made in terms of previous arrangements wherever possible.

If the client-debtor is late with his payment to us we contact him by phone and letter urging him to meet his obligations. This relieves some of the burden from your own collection departments. We hasten to add that we do not expect to intervene in any rights you possess to protect your security of financial interest. We function merely as a helping hand. If we are not paying you promptly then you may be sure that the debtor is not paying us and we do not intend to operate as a shield for him without good cause. All we ask is that you contact us with questions concerning payment or other matters so long as you are being paid regularly.

By way of other information on our business we should like to state that our employees are bonded by the Maryland Casualty Company. Funds paid into us are, wherever possible, redistributed the same day by check. We have an office in Omaha and have done business with all of the banks, loan and collection companies as well as most of the merchandise houses. We are also connected by ties of ethics with Credit Advisors of Detroit, Chicago and Gary.

Please feel fee to call us at any time concerning any questions you might have.

Very truly yours,

Credit Advisors
....., Manager

GO/rlm

[fol. 213c]

DEFENDANT'S EXHIBIT B

(Letterhead of Credit Advisors, Wichita, Kansas)

We the undersigned do hereby request that you accept the terms set forth herein by Credit Advisors Company so that we can resolve our financial affairs.

A review of our indebtedness indicates that we may make a distribution to all our creditors by .....
your part being $.....

Your cooperation in participating in this arrangement will be appreciated. This will enable all of our creditors to receive their share of our income monthly until such time as our indebtedness may be refinanced or liquidated.

If this arrangement is unsatisfactory, please contact Credit Advisors.

.....

Address .....

Your Account #.....

.....

(Clip here and return lower section)

Our present balance .....

Our records have been posted .....

CA #..... Confirmed by .....

[fol. 213d]

DEFENDANT'S EXHIBIT C

(Letterhead of Credit Advisors, Wichita, Kansas)

In response to your request for information we will explain as briefly as possible the type of service we offer.

We are not a loan company, but we do have a new and successful plan of consolidating debts into one payment per payday. This method has all the advantages of a consolidation loan but you do not pay high rates of interest nor do you need to mortgage property or have co-signers.

All of your bills are combined so that you have just one place to pay. We then budget your income with you and arrange a payment plan with the people you owe at a payment you can afford. You make only one payment—to this office. We re-budget this money and promptly send it out to your creditors in such a way as to keep them satisfied.

A complete listing of all the creditors, addresses and amounts due must be given us so that we may contact them and inform them that we will be acting as your representative and that they will receive all payments from us and to contact us in the future.

If there are no judgments or repossessions pending we are able to perform this service for as low as:

If You Owe:	You May Pay As Little As:
$1000	$15.00 per week
$2000	$25.00 per week
$3000	$35.00 per week

May we point out some of the advantages of our service if we receive REGULAR payments from you:

1. You have only one payment to make. We pay all creditors by check, thus saving you much time, postage and effort and giving a perfect record of all payments.
2. Your credit improves with regular payments.
3. Regular payments avoid garnishments and wage assignments.
4. Most important—You have peace of mind.

Enclosed is one of our forms for you to fill out if you feel we could be of any help. No obligation is incurred by coming in to see what we can do. Our service is confidential.

REMEMBER: YOU CANNOT BORROW YOUR WAY OUT OF DEBT.

Very truly yours,

CREDIT ADVISORS

CREDIT ADVISORS

APPLICATION DATE _____

NAME _____ WIFE _____ DEPENDENTS _____

ADDRESS _____ HOW LONG _____ TELEPHONE _____

TOWN _____ STATE _____ RENTING _____ BUYING _____

MORTGAGE WITH _____

EMPLOYER _____ HOW LONG _____ PAY PAID _____

OTHER PHONE _____ TAKE HOME PAY _____

ALL OTHER INCOME _____

WHEN CAN YOU MAKE FIRST PAYMENT _____

WHERE IS WIFE EMPLOYED _____ TAKE HOME PAY _____

LIST HERE YOUR MONTHLY EXPENSES. . . . . .BE COMPLETE

RENT OR MORTGAGE PAYMENT _____

FOOD AND GROCERIES _____

HOUSE GAS _____

ELECTRICITY _____

HEAT _____

INSURANCE (APART FROM CAR INSURANCE) _____

CAR FARE TO WORK _____

AUTO EXPENSES (GAS & OIL) _____

TELEPHONE BILL _____

[fol. 2130]

DEFENDANT'S E

RENT OR MORTGAGE PAYMENT _____

FOOD AND GROCERIES _____

HOUSE GAS _____

ELECTRICITY _____

HEAT _____

INSURANCE (APART FROM CAR INSURANCE) _____

CAR FARE TO WORK _____

AUTO EXPENSES (GAS & OIL) _____

TELEPHONE BILL _____

MISCELLANEOUS _____

TOTAL MONTHLY EXPENSES _____

_____ DO NOT WRITE BELOW THIS LINE _____

TOTAL INCOME _____

TOTAL EXPENSES _____

AVAILABILITY _____

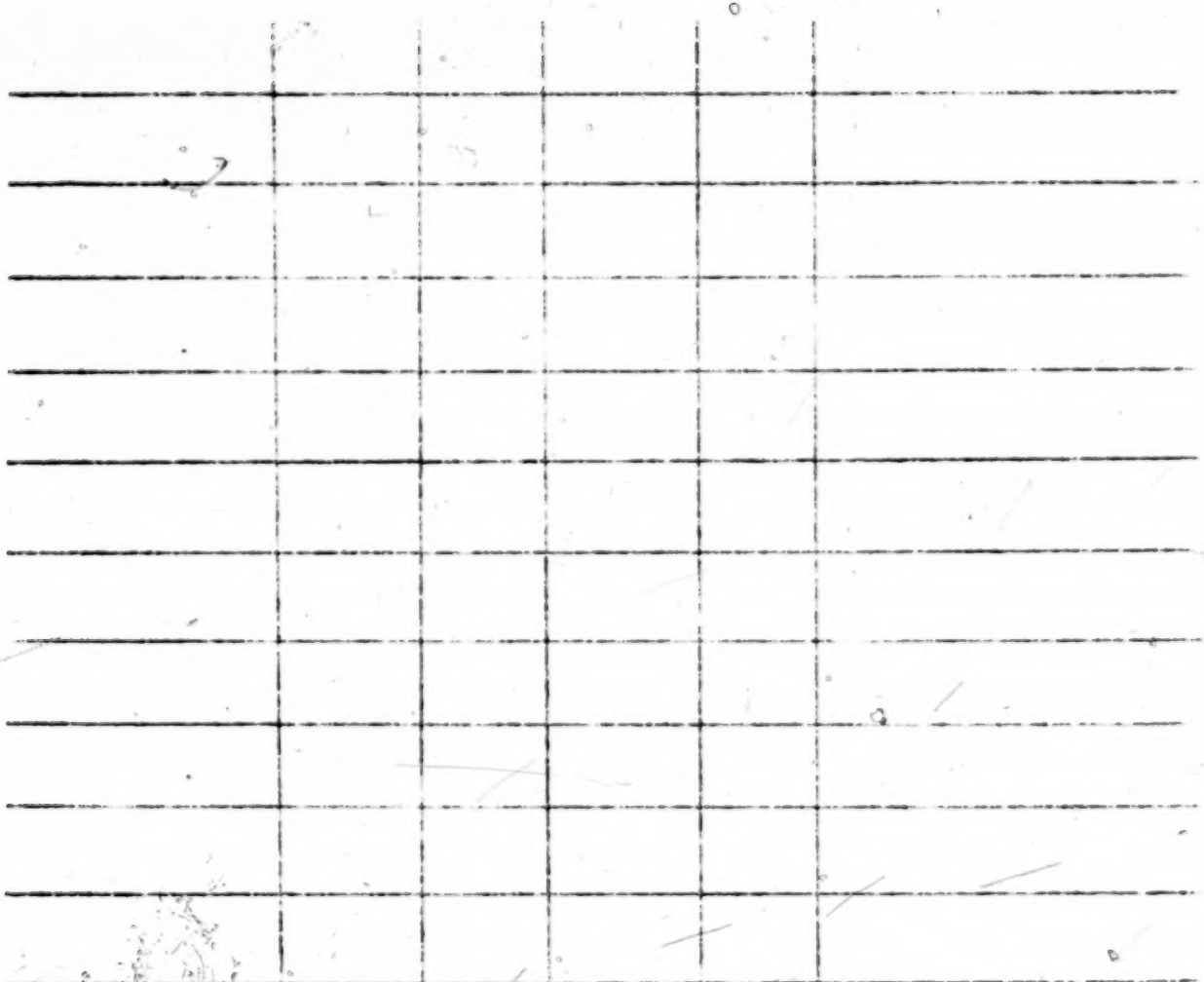
[fol. 2136]

DEFENDANT'S EXHIBIT D

FINANCIAL STATEMENT

NOTE: LIST ALL OUTSTANDING BILLS.
THIS OFFICE CANNOT BE RESPONSIBLE FOR ANY OMISSIONS.

CREDITORS	TOTAL OWED	MONTHLY PAYMENT	ACCOUNT NUMBER	LAST PAID	ADDRESS



THIS IS A COMPLETE LIST OF MY CREDITORS AND I (A.) DO NOT OWE
OTHER DEBTS OR JUDGMENTS, NOR AM I (B.) INSOLVENT OR BANKRUPT.

120 [fol. 213ec]

[fol. 213f]

Defendant's Exhibit E

Credit Advisors

Date .....

Agreement:

I (we) hereby employ the Credit Advisors to act as my (our) agent in arranging and making monthly payments to my (our) creditors who are listed in my application. I (we) hereby agree to cooperate with Credit Advisors Company in every respect, in the payment of these obligations, and to furnish the Credit Advisors Company with a complete and accurate list of all my (our) creditors, with addresses and amounts owing each creditor, together with the original and present status of each account.

I (we) hereby agree to pay to the Credit Advisors Company the sum of $..... per week (month) on ..... until the sum of $..... which is the total principal amount of my present indebtedness including the charges of the Credit Advisors has been paid. Any amount paid as interest to finance companies or others will be in addition to the above amount stated as total indebtedness.

I (we) hereby agree to pay to the Credit Advisors Company the sum of $..... as compensation for their services in acting as my (our) agent herein mentioned above. This contract is for one year, renewable at the option of the debtor.

In the event that I (we) default in my (our) payments, the Credit Advisors can at any time declare this contract terminated. Should this contract be terminated by me (us) at any time or the Credit Advisors, I (we) hereby agree to pay the Credit Advisors the amount of $25.00. This amount shall become due and payable to the Credit Advisors at their option, upon the notice of cancellation being sent to me at my last known address.

It is distinctly understood by me (us) that the services to be rendered to me (us) by the Credit Advisors is for

the purpose of enabling me (us) to pay off our creditors and that I (we) further understand that the Credit Advisors does not render any legal opinions or give any legal advice nor act as my (our) attorney in any manner or capacity whatsoever.

Signed in the presence of: Name .....

.....

Credit Advisors

Contract—Note Number .....

[fol. 213g]

DEFENDANT'S EXHIBIT F

POWER OF ATTORNEY

I, ..., of ....., ... County, ..., do hereby appoint, make and constitute the Credit Advisors, of ....., ..., and its duly designated and appointed officers and employees, my true and lawful attorney in fact and to act for and on my behalf in the following manner:

1.

Use so much of the funds as may be found necessary and is agreed upon and set forth in the budget prepared for me by Credit Advisors for the purposes set forth in said budget and contract.

2.

I agree to hold Credit Advisors, its officers and employees harmless for any act performed on my behalf pursuant to this Power of Attorney, and any instrument executed to carry out the intent hereof, and I hereby ratify all and any acts performed on my behalf pursuant hereto.

3.

It is understood and agreed that the appointment of Credit Advisors, its officers and employees my true and lawful attorney in fact in no way relieves me of any obligation to pay or meet any obligations now due or hereafter becoming due or incurred by me, nor does the acceptance of such Power of Attorney by Credit Advisors, bind it or its officers or employees to pay any of my obligations or become security or guarantor or grantor thereof.

.....

.....

Accepted by Credit Advisors, this ..... day of .... 1960.

CREDIT ADVISORS

BY: .....

[fol. 213h]

DEFENDANT'S EXHIBIT G

"Missouri Debt Pooler a Bankrupt"

DeForest Bush who was in the debt pooling business and hence a self-proclaimed expert at paying other people's bills couldn't pay $188,229 worth of his own bills.

A St. Louisan, Mr. Bush is a veteran of the "budget plan" type of debt service. Persons who are badly in debt can arrange for such a debt pooling service to take over in [fol. 213i] dealing with creditors. The debt adjustor arranges for a plan of payment—using the customer's money, of course—and charges him a fee for arranging the peace pact with his creditors.

In a voluntary petition in bankruptcy filed Thursday in Federal Court Mr. Bush said he had liabilities of $188,229.

And he listed assets of $452. Of this, $375, the valuation of his household goods, is exempt from use in meeting claims. So the assets for meeting the bills were given as $27 in the bank and $50 in accounts receivable.

Mr. Bush listed himself as debt adjustor with offices at 315 North Seventh St. and gave his home address as 4407 O'Neill Ave., Normandy. He said he had been in business for 21 years.

In 1959 he lost $24,143 on his operations, the petition said, and in 1960 his profit was $1474. It is noted that in 1955 he was doing business in Missouri, Texas, Georgia, West Virginia, Alabama, Indiana and Washington, D. C.

[fol. 213j]

DEFENDANT'S EXHIBIT H

No. B-6975 10 Feb. 1961.

Frank C. Skrupa vs. Gordon Oliver

THE COURT:

In this case, as I understand it, the defendant was employed by the plaintiff and received training to the extent of a couple of months in Omaha, then was brought to Wichita, wherein a branch office, or another office, was opened by the plaintiff; that for some 8 months or so he worked there as manager of the office in Wichita, and then his employment was terminated. That after he had worked a couple of weeks in Omaha, he entered into a contract marked Plaintiff's Exhibit 1 in this case. He was trained from that of a person having worked in safety up in the position to manage the type of business that the plaintiff maintains in Wichita.

There is no evidence before this Court that the plaintiff has been damaged in any way by the defendant going to work for someone who is in a similar type of business. As a matter of fact, the evidence shows, in my opinion, that the plaintiff has not received any damages. There is no testimony here to show, and as a matter of fact to the contrary, that any of the plaintiff's clients as they refer to them, were taken by the defendant to his new employer. As a matter of fact, as I interpret the testimony he would have no reason, or could not attempt to take them because the agreement was already made between the socalled clients and the plaintiff.

[fol. 213k] I see no trade secrets involved here. I was trying to elicit it from the witnesses this morning wherein he obtained information that would be, by the use of it, would be detrimental to that of the plaintiff.

This is not the type of case of personal contact such as your route man that we have had cases here in Wichita where I have restrained route men from going back into the same area, and not restrained them from working for competitive company in a different area, as long as they did not interfere in the routes where they had been employed.

Injunction is an extraordinary remedy; it is to be brought only on rare occasions wherein the damages are irreparable. In addition to that, I am of the opinion that the plaintiff's business as conducted here in Wichita smacks of unauthorized practice of law, and for these reasons the demurrer to the evidence will be sustained.

**

The court is of the opinion, Mr. Mc Rae that when a person comes into this court asking for equitable relief in the form of an injunction that they must come into this court with clean hands. Therefore, I am of the opinion that this plaintiff's conduct of business in the city of Wichita is bordering on the unlawful practice of law and he is not entitled to come into this community and practice law. That is merely an additional reason, other than the two that [fol. 213 l] I have mentioned. This court is vitally interested, not only as a judge, but as President of this bar association that we not have unauthorized practice of law in the city of Wichita or any place else in the state, and I think that is part of the responsibility of the courts and judges thereof.

***

Eliminating that phase of it and going strictly to the pleadings and the testimony other than that with reference to possibly the unauthorized practice of law as I stated in my first two reasons, there were no trade secrets involved here that have been presented to this court. There was no loss by the plaintiff according to the testimony here, that

the defendant was not such that either his personal contacts with the plaintiff's clients as he referred to them, in a position to take them away from the plaintiff. I see from the evidence before me there has been no damage done to the plaintiff.

**

I don't see any testimony before this court wherein I can see that the plaintiff would ever be injured, from the testimony before this court.

[fol. 214] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

Civil Action No. W-2434

FRANK C. SKRUPA, d/b/a CREDIT ADVISORS, Plaintiff,

vs.

KEITH SANBORN, County Attorney, for the County of Sedgwick, State of Kansas, and WILLIAM M. FERGUSON, Attorney General for the State of Kansas, Defendants.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND OPINION—
Filed November 27, 1961

This is an action to enjoin the enforcement, operation and execution of a statute of the State of Kansas, known as Senate Bill 366, passed by the 1961 Session of the Kansas Legislature. The grounds on which the action is predicated are that the act is void because it violates and infringes plaintiff's rights guaranteed by the due process clause of the Fourteenth Amendment to the United States Constitution.

The action being one to enjoin the enforcement of a state statute, a Three-Judge Court was convened. The cause came on regularly for hearing at Topeka, Kansas, on the

17th day of August, 1961, plaintiff being present by his attorneys, Lawrence Weigand, Don Bell and Ernest McRae, and the defendants being present by their attorneys, Charles Hanson, Assistant Attorney General; Keith Sanborn, County Attorney, Sedgwick County; William Tomilson, Assistant County Attorney, Sedgwick County; Arty Vaughn, Assistant County Attorney, Sedgwick County; and Wayne Coulson. At the conclusion of the hearing, the case was taken under advisement. Briefs were requested. These have been considered by the court. The court finds these facts.

[fol. 215] Findings of Fact

Plaintiff operates a business known as "Credit Advisors" with offices in Omaha, Nebraska, and Wichita, Kansas. The business consists of debt adjustment. In general, the business may be defined as consisting of making arrangements with persons in financial difficulties, by which, for a fee, plaintiff undertakes to marshal all his client's creditors and his assets and undertakes to effect an agreement by which the debtor shall pay plaintiff a certain percent of his earnings which are then paid, as agreed upon, to his creditors. This sketchy description of plaintiff's business is sufficient to pinpoint the questions presented in this case.

The 1961 Act referred to above deals with debt adjustment. Plaintiff's business falls within the provisions of the act. The act reads, as follows:

> "Section 1. For the purpose of this act, 'debt adjusting' means the making of a contract, express, or implied with a particular debtor whereby the debtor agrees to pay a certain amount of money periodically to the person engaged in the debt adjusting business who shall for a consideration distribute the same among certain specified creditors in accordance with a plan agreed upon. Whoever engages in the business of debt adjusting shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than five hundred dollars ($500), or by imprisonment in the county jail not exceeding six (6) months, or by both such fine and imprisonment: Provided, That the provisions of this act shall not apply to those

[fol. 216] situations involving debt adjusting as herein defined incurred incidentally in the lawful practice of law in this state."

Walter A. Huxman, United States Circuit Judge, Retired; Delmas C. Hill, United States Circuit Judge; Arthur J. Stanley, Jr., Chief Judge, United States District Court.

Conclusions of Law

The court concludes, as a matter of law, that the act in question is prohibitory and not regulatory; but even if construed as regulatory, it is an unreasonable and unwarranted regulation of a lawful business, and, therefore, constitutes a violation of the rights of plaintiff as guaranteed by the due process clause of the Fourteenth Amendment to the Federal Constitution.

Walter A. Huxman, United States Circuit Judge, Retired; Delmas C. Hill, United States Circuit Judge; Arthur J. Stanley, Jr., Chief Judge, United States District Court.

[fol. 217] Opinion

Debt adjustment is a business affected by a public interest and because of its nature is subject to regulation by a state under its police powers. State police powers are broad and comprehensive and it is held, without exception, that federal courts should be loath to interfere with the exercise of such powers. But, on the other hand, we have a clear duty and mandate to protect federal rights guaranteed by the Constitution, and this duty we must not shirk.

The Attorney General has filed a motion to dismiss as to him on the ground that he is not a proper party. There are a number of state cases of a similar nature in which the Attorney General was joined as a party defendant.[1] Apparently the propriety of joining him was not specifically

[1] Gilbert v. W. R. Matthews, Co. Attorney, and John Anderson, Atty. Gen., 352 P. 2d. 58.

challenged. It seems to have been generally accepted that he is a proper party defendant. The Attorney General of Kansas is the general law enforcement officer of the state. He supervises the activities of county attorneys. In proper cases, he may direct them to enforce the laws of the state. The motion to dismiss should be overruled.

The decision turns upon whether the act in question is regulatory or prohibitory, and if regulatory, whether it manifests a reasonable and necessary regulation of a business which, although subject to police power, is nonetheless a lawful business. A right to regulate does not carry with it the right to adopt unreasonable or unfair regulations.[2] Since there is no dispute in the principles of law which must be applied, and since we are here concerned with [fol. 218] the construction of the Kansas statute by application of these principles, no useful purpose would be served by citation and discussion of a number of decisions construing somewhat similar statutes of other states, especially where such statutes differ in material respects from the one under consideration here.

Kansas, in passing the act in question, apparently took it almost verbatim from a similar Pennsylvania statute. The wording of the two acts is almost identical. The Superior Court of Pennsylvania in a well reasoned opinion declared the Pennsylvania act unconstitutional. It held that the Pennsylvania act was not regulatory but prohibitory. It held that prohibiting engagement in a lawful business was an abuse of the police power.[3] We are in full accord with the reasoning and philosophy of the Pennsylvania court.

Debt adjustment by its very nature may lend itself to great abuses and because of this the state has power to regulate it to the end that its citizens may not be overreached by unscrupulous persons. No doubt, the state can, by proper regulations, set up standards and qualifications, and even limit the business to certain classes of qualified

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[2] Gilbert v. W. R. Matthews, Co. Attorney, and John Anderson, Atty. Gen., supra.

[3] See Commonwealth v. Stone, 155 A. 2d. 453

persons. But such regulations must be founded on reason. Whatever the state does must bear a reasonable relation to what the state seeks to do—protect those in financial distress from exploitation by unscrupulous and dishonest operators.

A careful analysis of the act fails to show anything that can be denominated regulatory. After defining debt adjustment, the act states that anyone who "engages in the business of debt adjustment shall be guilty * * *" of an offense and punished as defined in the act.

The only exception is that the "act shall not apply to those situations involving debt adjusting as herein defined [fol. 219] incurred incidentally in the lawful practice of law in this state." This, in our opinion, is not a regulation, or if it is, it is an unreasonable regulation. To say that a lawyer may adjust debts only as an incident to a case which is otherwise before him, is most unreasonable. If a lawyer, engaged in the regular practice of the law, concluded there was a greater field for him in devoting all his time to debt adjustment, rather than to the general practice of law, he could not discontinue his general practice and devote his full time to debt adjustment. He could not do so because he can adjust debts only as an incident to his general law practice. We conclude, first, that the act is prohibitory and not regulatory; and that it prohibits anyone from engaging in the business of debt adjustment. But even if the exception is considered as regulatory, it is an unreasonable regulation of a lawful business. We know of no statute aside from the Pennsylvania statute which has gone that far.

Our attention is called to the case of American Budget Corp. v. Furman, 170 A. 2d 63, in which the New Jersey Superior Court reached a conclusion contrary to that of the Pennsylvania Court and held a somewhat similar act constitutional. No useful purpose would be served by a detailed analysis of the Furman case. It is sufficient to say that it differed in many particulars from the Pennsylvania case and from the act we have before us here. We adopt the reasoning of the Pennsylvania case, Commonwealth v. Stone, supra.

Our attention has also been called to the case of Williamson v. Lee Optical Company, 348 U.S. 483, in which the Supreme Court held constitutional a rather drastic act by the Oklahoma legislature regulating the business of fitting and selling glasses as a valid exercise of the police power. But that act did not outlaw the business of fitting lenses to a face or duplicating or replacing, into frames, lenses [fol. 220] or other optical appliances. The attack on the statute was that it was unlawfully discriminatory in its provisions as to who could engage in such business or the conditions under which the business could be carried on. Under the Kansas statute, no one can engage in debt adjustment as a business. Debt adjustment, though recognized as a lawful business, is declared unlawful.

Judgment will be entered denying the motion of the defendant, Attorney General, to be dismissed from the case. A further judgment will be entered permanently enjoining the enforcement of the act against plaintiff.

Walter A. Huxman, United States Circuit Judge, Retired; Delmas C. Hill, United States Circuit Judge; Arthur J. Stanley, Jr., Chief Judge, United States District Court.

[fol. 221]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

No. W-2434

DISSENTING OPINION

Arthur J. Stanley, Jr., District Judge.

I cannot agree with the conclusion that the questioned statute is unconstitutional.

That debt adjustment is a business affecting the public interest is not questioned. It has been the subject of legislation in many states. (See the summary of state statutes appearing in the opinion in *American Budget Corp.* v. *Furman*, 67 N.J. Super. 134, 170 A.2d 63.) Regulation of the business, therefore, is a proper function of the state in the exercise of its police power. I believe that the Act under attack is an effort on the part of the legislature of

Kansas to impose reasonable and necessary regulations on a business affecting the financial stability of the citizens of Kansas.

The Act provides in effect that debt adjustment as therein defined may be engaged in only by attorneys, and then only when carried on "incidentally in the lawful practice of law." It is true that a lawyer who has abandoned his general practice to devote his full time to debt adjustment [fol. 222] would be in violation of the statute. I feel sure that this is exactly what the legislature intended. An attorney engaged in general practice, when consulted by a client whose financial affairs had become involved, would, quite naturally, explore all avenues open to his client. He would inquire as to the possibility of defenses to the claims, consider the applicability of exemption laws, explain the advantages and disadvantages of bankruptcy, and might or might not suggest the initiation of a debt adjustment scheme. One admitted to the Bar but who had chosen to become a debt adjuster and to limit himself to that one narrow field would be likely to adopt a different approach to the problem. He would not be expected to advise his client to seek relief through another means than that in which he specialized exclusively. (If he did, would he not by so doing bring himself within the proviso so that he would not then be barred by the statute?)

In arriving at a decision as to the necessity or reasonableness of the regulation, it is not essential that the court agree with the methods adopted by the lawmakers, or that it be concerned with the wisdom of the legislation. The scope of the court's inquiry should be limited to whether any state of facts, known or reasonably to be assumed, support the legislative judgment. *American Budget Corp.* v. *Furman, supra; Williamson* v. *Lee Optical Co.*, 348 U.S. 483.

I am more impressed by the reasoning of the Superior Court of New Jersey in *American Budget Corp.* v. *Furman, supra*, than by that of the Superior Court of Pennsylvania in *Commonwealth* v. *Stone*, 191 Pa. Super. 117, 155 A.2d 453. The Pennsylvania court leans heavily on *Adams* v. *Tanner*, 244 U.S. 590. As the New Jersey court points out, quoting *Staten Island Loaders, Inc.* v. *Waterfront Com-*

mission, 117 F.Supp. 308 (D.C. S.D.N.Y. 1953). "* * * * the U. S. Supreme Court has withdrawn from this extreme [fol. 223] view of the Fourteenth Amendment * * * * and has made it increasingly clear that it is not for the judiciary to decide whether the legislature has chosen the best remedy to meet an evil * * * *."

I would hold that the Kansas Act is not invalid as in violation of the Fourteenth Amendment and could deny the injunction.

Arthur J. Stanley, Jr., District Judge.

[fol. 224] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

Civil Action No. W-2434

FRANK C. SKRUPA, d/b/a Credit Advisors, Plaintiff,

vs.

KEITH SANBORN, County Attorney for the County of Sedgwick, State of Kansas, and WILLIAM M. FERGUSON, Attorney General for the State of Kansas, Defendants,

WILBUR D. GEEDING, et al., Amici Curiae.

JOURNAL ENTRY OF JUDGMENT, PERMANENT INJUNCTION, AND RELEASE OF BOND—Filed January 8, 1962

This matter came on for trial on August 17, 1961, before a duly constituted three judge court consisting of Walter A. Huxman, United States Circuit Judge, retired, Delmas C. Hill, then United States District Judge and now United States Circuit Judge, and Arthur J. Stanley, Jr., United States District Judge, now Chief Judge, United States District Court for the District of Kansas; the plaintiff being present and represented by his attorneys Lawrence Weigand, Donald A. Bell, and Ernest McRae; the defendant

Keith Sanborn, County Attorney of Sedgwick County, Kansas, being present in person and appearing in his own behalf and also represented by Artie Vaughn, Assistant County Attorney and William Tomlinson, Assistant County Attorney; the defendant William M. Ferguson, Attorney General for the State of Kansas, being represented by Charles Henson, Jr., Assistant Attorney General; and Wilbur D. Geeding, et al., comprising unauthorized practice of law committee of Wichita Bar Association, represented by their Attorney, Wayne Coulson.

[fol. 225] Thereupon, the application of Wilbur D. Geeding, et al. to intervene was considered by the Court, and after hearing the arguments of counsel and being duly advised in the premises, the Court found that Wilbur D. Geeding, et al., comprising unauthorized practice of law committee of the Wichita Bar Association should be allowed to participate in this hearing as an Amici Curiae.

Thereupon, evidence was produced, and the Court took the matter under advisement with all parties to submit briefs in support of their position.

Now on this 27 day of November, 1961, after consideration of all the evidence and the briefs of counsel, Court finds that as a matter of law, Senate Bill No. 366, passed by the 1961 Session of the Kansas Legislature constitutes a violation of the rights of plaintiff as guaranteed by the Due Process clause of the Fourteenth Amendment to the federal constitution; and that judgment should be entered permanently enjoining the enforcement of said act against the plaintiff. The Court further finds that the motion of the defendant, Attorney General, to be dismissed from the case should be overruled.

It Is Therefore by the Court Considered, Ordered, Adjudged and Decreed That the motion of the defendant, William M. Ferguson, Attorney General for the State of Kansas, to be dismissed from this action is hereby overruled.

It Is Further by the Court Considered, Ordered, Adjudged and Decreed That the defendants, Keith Sanborn,

County Attorney of Sedgwick County, Kansas and William Ferguson, Attorney General of the State of Kansas, and their agents, associates, assistants, and all persons acting in their behalf be and are hereby enjoined permanently from filing any complaint against the plaintiff, his agents, servants, or employees for alleged violation of Senate Bill 366, Chapter 190, 1961 Kansas Session Laws or prosecut-
[fol. 226] ing any acts for violation of same by said plaintiff, his agents, servants, or employees or in any way attempting to enforce any of the provisions of said Senate Bill against said plaintiff, his agents, servants, or employees.

It Is Further by the Court Considered, Ordered, Adjudged and Decreed That the bond in the amount of $2500.00 posted by the plaintiff as security for restraining order and filed in this Court on the 30th day of June, 1961, is hereby released in its entirety; and the plaintiff and his surety thereon are fully released from any and all obligations contained in said bond.

Walter A. Huxman, United States Circuit Judge, Retired; Delmas C. Hill, United States Circuit Judge; Arthur J. Stanley, Jr., Chief Judge, United States District Court.

Approved:

Ernest McRae, Weigand Curfman Brainerd Harris & Kaufman, By Laurence Weigand.

Keith Sanborn, County Attorney, Sedgwick County, Kansas, Defendant, By William I. Tomlinson.

William M. Ferguson, Attorney General for the State of Kansas, By Charles N. Henson.

Wilbur D. Geeding, et al., on behalf of unauthorized practice of law committee of the Wichita Bar Association, Amici Curiae, By Wayne Coulson.

[fol. 227] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

Civil Action Number W-2434

FRANK C. SCRUPA, d/b/a CREDIT ADVISORS, Plaintiff,

vs.

KEITH SANBORN, County Attorney, for the County of Sedgwick, State of Kansas, and WILLIAM M. FERGUSON, Attorney General for the State of Kansas, Defendant.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed January 26, 1962

I. Notice is hereby given that Keith Sanborn, County Attorney for the County of Sedgwick, State of Kansas, and William M. Ferguson, Attorney General for the State of Kansas, the defendant's above named, hereby appeal to the Supreme Court, of the United States from the final judgment permanently enjoining the enforcement of Senate Bill (366), passed by the 1961 Session of the Kansas Legislature, entered in this action on November 27th, 1961. This appeal is taken pursuant to 28 U.S.C.A. §1253.

II. The Clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States and include in the said transcript the following:

1. Complaint of Plaintiff.
2. Temporary Restraining Order, Hill, C. J.
3. Order, Judges Huxman, Hill and Stanley to constitute a three Judge Court.
4. Motion of Defendant, William F. Ferguson, Attor-

[fol. 228] ney General of Kansas to dismiss.

5. Reporters transcript. of proceedings had on June 28th, 1961, hearing on application for restraining order.

6. Application to intervene, Wilbur D. Geeding, Wichita Bar Association Committee on unauthorized practice of law.

7. Answer of defendant, William F. Ferguson, Attorney General for the State of Kansas.

8. Answer of defendant, Keith Sanborn, County Attorney, for Sedgwick County, Kansas.

9. All briefs of plaintiff, defendant's and intervening defendant's and Amici Curiae.

10. Reporters transcript of proceedings had on August 17th, 1961, Topeka, Kansas.

11. Findings of fact and conclusions of law and opinions Huxman, Hill, Judges.

12. Dissenting opinion of Judge Stanley.

13. Journal Entry of Judgment, Permanent Injunction and Release of Bond.

14. All exhibits introduced by both plaintiff and defendant.

15. Notice of appeal and Service thereof.

III. The following questions are presented by this appeal:

A. [illegible] Act (Senate Bill 366) in question is not prohibitory but regulatory, and in either case the action of the Kansas Legislature is not so unreasonable, arbitrary, capricious and unrelated to any valid objective as to fall under the constitutional interdictions relied upon by the plaintiff?

B. The Act in question is not violative of Article I, Sec- [fol. 229] tion 10 of the Constitution and of Amendment Fourteen, Section I as depriving plaintiff of property without due process of law, denying the

equal protection of the laws and as impairing the obligations of existing contracts.

C. The Court erroneously overruled the legislative judgment in regulating the commercial pursuit known as "debt adjusting" when the subject is comprehended in the police power of the State, and debatable questions as to reasonableness are not for the Court but for the Legislature which is entitled to form its own judgment?

D. The United States District Court for the District of Kansas erred in declaring unconstitutional Senate Bill 366 which codified and clarified existing power of the Supreme Court of the State of Kansas, the statute is merely in aid of and does not supercede or detract from authority of the judicial department to control the practice of law. By judicial act the Supreme Court of the State of Kansas, as long ago as 1935, declared the business, so-called, of debt-adjusting, both at that time and later with respect to this same defendant, prior to the passage of the statute about which complaint is made, the District Court of Sedgwick County, Kansas declared this to be the unauthorized practice of law and the statute [fol. 230] merely gives an additional remedy to the inherent authority vested in the Court to govern persons who would be practitioners of the law and declared the public policy as expressed by the legislature of the State of Kansas, to be that a criminal sanction would attach to this unauthorized practice of law.

E. The plaintiff has no legal right to engage in the "debt adjusting" business which is prohibited by the statute and that, therefore, the statute could not have deprived plaintiff of any property rights of any kind or character, or of any of his personal rights.

F. The Legislature had the right to determine that, whether or not this was the practice of law it required for the protection of its citizens the giving of advice, which the plaintiff does not, or claims it

does not, give, and was a lawful exercise of the police powers of the State of Kansas, and the Constitutional provisions relied upon by plaintiff must yield to the legitimate police power of the State of Kansas.

G. The Court erred in overruling the motion of the defendant, Attorney General of the State of Kansas, to dismiss the action as to him because he was not a proper party defendant.

Keith Sanborn, County Attorney

[fol. 231] Proof of Service (omitted in printing).

[fol. 233]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

[Title omitted]

ORDER EXTENDING TIME WITHIN WHICH TO DOCKET APPEAL—March 23, 1962

Now, on this 23rd day of March, 1962, upon the timely application and motion of the defendants, and upon good cause being shown, it is ordered that the time for the defendants-appellants to docket the case on appeal in the Supreme Court of the United States, be extended pursuant to Rule 13, Rules of the Supreme Court of the United States, to and including April 23, 1962.

Delmas C. Hill, Judge.

Approved: Keith Sanborn, County Attorney for Sedgwick County, Kansas, By: Melvin M. Gradert, Deputy County Attorney.

Certificate of service (omitted in printing).

[fol. 238] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

[Title omitted]

ORDER EXTENDING TIME WITHIN WHICH TO DOCKET APPEAL—April 23, 1962

Now, on this 23rd day of April, 1962, upon the timely application and motion of the defendants, and upon good cause being shown it is ordered that the time for the defendants-appellants to docket the case on appeal in the Supreme Court of the United States, be extended pursuant to Rule 13, Rule of Supreme Court of the United States, to and including May 7, 1962.

Delmas C. Hill, United States Circuit Judge.

Approved: Keith Sanborn, County Attorney, By Melvin M. Gradert, Deputy County Attorney.

Certificate of service (omitted in printing).

[fol. 239] Clerk's certificate (omitted in printing).

[fol. 240]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

[Title omitted]

ORDER TO TRANSMIT ORIGINAL EXHIBITS TO SUPREME COURT PENDING APPEAL—March 1, 1962

Now, on this 1st day of March, 1962, for good cause shown, it is by the Court

Ordered that the original exhibits admitted in evidence in the trial of the above action be transmitted in lieu of copies thereof to the United States Supreme Court.

Arthur J. Stanley, Jr., Judge.

[fol. 245] Clerk's certificate (omitted in printing).

[fol. 246]

SUPREME COURT OF THE UNITED STATES

No. 111—October Term, 1962

WILLIAM M. FERGUSON, Attorney General for the State of Kansas, et al., Appellants,

vs.

FRANK C. SKRUPA, d/b/a Credit Advisors.

Appeal from the United States District Court for the District of Kansas.

ORDER NOTING PROBABLE JURISDICTION—October 8, 1960

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the summary calendar.

Mr. Justice Goldberg took no part in the consideration or decision of this case.